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THE
GUIDE FOR OHIO SCHOOL
OFFICERS

CONTAINING

ALL THE LAW OF OHIO APPLICABLE TO
SCHOOL OFFICERS

WITH

FORMS AND SUGGESTIONS FOR THE GUIDANCE OF ALL
SCHOOL OFFICIALS

BY

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Officers, Ohio Probate Law and Practice, etc.

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PREFACE

In the following pages, there have been collected all the school laws of our state which are in force at this time. To these have been added in appropriate places numerous pertinent decisions of this, and other states, as well as a large number of forms and considerable matter in the nature of suggestions and comments with the design and desire to make a compendium that will be useful to all who may be interested in securing such an enforcement of these laws as will insure the full accomplishment of the benign and beneficent purpose, intended by their enactment.

An appendix, containing a short history of our public school system, questions asked at various examinations, and much statistical matter of both State and National character, that may be of interest to the inquiring official, has been added.

WM. M. ROCKEL.

Springfield, O., April 1, 1907.

Guide for Ohio School Officers

CHAPTER 1.

CLASSIFICATION AND CHANGE OF DISTRICTS.

SECTION.	SECTION.
§ 1 (3885) Classification of school districts.	§ 6 (3891) Special school districts.
§ 2 (3886) City school districts.	§ 7 (3892) Territory must be contiguous.
(3887) Repealed.	§ 8 (3893) Annexation of territory to cities and villages.
§ 3 (3888) Village school districts.	§ 9 (3894) Transfer of territory by agreement between boards of education.
§ 4 (3889) Change of classification in certain cases; terms of members of boards of education when classification is changed; village districts abolished by surrender of corporate power of municipality.	§ 10 (3895) Transfer of territory by proceedings in probate court.
§ 5 (3890) Township school districts.	§ 11 (3896) Division of funds and indebtedness when territory is transferred or annexed.

§ 1. [Classification of school districts.] (§ 3885.) The state is hereby divided into school districts to be styled, respectively, city school districts; village school districts; township school districts; and special school districts. (97 v. 334.)

Common schools, districts and boards of education are not corporations within the meaning of Sec. 1, Art. XIII, of the Constitution. Under Section 26, Art. II, and Section 2, Art. VI, of the Constitution, laws regulating the organization and management of common schools must have a uniform operation throughout the state. (State v. Powers, 38 O. S., 54.) But schools may be classified as the legislature deems proper. (State v. Brewster, 39 O. S., 653.)

BASIS OF SYSTEM.—In a recent decision of our Supreme Court it is said:

“The civil township is the basis of our school system. Land in each township was donated by the national government to the inhabitants of such township for the use of schools. For surveying the northwest territory Congress adopted a new system of surveying. This system may be briefly described as the rectangular system. The territory was surveyed into

townships six miles square. Each township was divided into thirty-six sections one mile square, and, under the system of numbering, section sixteen was as nearly as any other in the center of the township.

“By section 7 of the act of 1802, which authorized the people of the eastern division of the northwest territory to form a constitution and a state government, Congress proposed that section 16 in every township ‘shall be granted to the inhabitants of such township for the use of schools.’ The proposition was accepted by a resolution passed November 29, 1802, by the constitutional convention, on condition that a like donation, amounting to about one thirty-sixth of the territory, be made in those parts of the state not surveyed, and this condition was complied with by an act of Congress in 1803. And in that year the legislature provided for the leasing of the same in order that the proceeds arising therefrom might be applied to the support of the schools. By an act passed in 1806 the commissioners, as soon as there were twenty electors in any original surveyed township, or part of fractional township, upon application of the electors, were required to fix the time and place for the election of trustees, who were empowered to lay off the township into proper divisions for the purpose of establishing schools therein. These districts were sub-districts. Subsequently joint sub-districts and city and village districts were provided for, and our system of common schools comprised township schools and city or village schools. The township was or might be divided into districts, and the city or village district might include territory outside of the corporate limits of the city or village. Whether or not this donation by the national government originated or made necessary a system in which the civil township is the basis, it is not to determine. The civil township and the original surveyed township are not always identical. The important thing is the fact that only territory forming part of the township school district was taken in creating other districts.

“Special districts were established by vote of the people under legislative authority or by special legislation, and were governed by the provisions of the act under which they were created. But prior to the act of 1873 (70 O. L., 195) special school districts were not recognized as a part of the common school system. By that act they were included as a part of that system, but it was not until the revision of the statutes in 1880 that provision was made for the establishment of such schools.” (Scott v. McCullough, 72 O. S., 539, 540.)

§ 2. [**City school districts.**] (§ 3886.) Each incorporated city, now existing or hereafter created, together with the territory attached to it for school purposes, and excluding the

territory within its corporate limits detached for school purposes, shall constitute a city school district. (97 v. 335.)

Sec. 3887. Repealed April 25, 1904. The repealed section applied to cities of the second class.

See § 12 (§ 3897), as to boards of education.

§ 3. [Village school districts.] (§ 3888.) Each incorporated village now existing or hereafter created, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than one hundred thousand dollars shall constitute a village school district, provided that each incorporated village now existing or hereafter created, together with the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than one hundred thousand dollars, shall not constitute a village school district; provided at any general election the proposition to dissolve or organize such village school district be submitted by the board of education to the electors of such village and be so determined by a majority vote of such electors. (98 v. 217.)

See § 28 (§ 3908), as to village school districts.

The board of education of a township established a central or high school and located it in a sub-district. The territory comprised in the sub-district after the establishment of the central high school, and before the act of May 1, 1873, was formed into an incorporated village; *held*, that the property of the central or high school and the management of the school did not, by virtue of said last mentioned act, pass to the board of education of the village. (Board of Education v. Board of Education, 41 O. S., 680.)

§ 4. [Change of classification upon advancement or reduction of municipality.] (§ 3889.) When a village is advanced to a city, the village school district shall thereby become a city school district; when a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts, shall continue in office until succeeded by the members of the

board of education of the new district, who shall be elected at the next succeeding annual election for school board members.

[School district in newly created municipality.] Upon the creation and incorporation of a village the same shall thereby become a village school district as provided by section 3888 (§ 3) of the Revised Statutes of Ohio, and if such village was, previous to its creation and incorporation, included within the boundaries of a special school district, but said special district included more territory than is included within the village limits, said territory shall be, and thereby is, attached to said village school district for school purposes.

[School district in village upon surrender of corporate powers.] When a village surrenders its corporate powers or dissolves a village school district, as provided by section 3888 (§ 3) of the Revised Statutes of Ohio, the village school district shall be thereby abolished and the territory formerly constituting said village district shall become a part of the township school district or districts of the civil township or townships in which it is situated, and all school property shall pass to and become vested in the township board of education of the civil township in which it is situated; the provisions of section 1536-4 of the Revised Statutes of Ohio in regard to the settlement of the affairs of a village that has surrendered its corporate powers shall also apply to the village school district and the board of education of the same, and in case the village school district is situated in two or more townships any distribution of funds shall be made in proportion to the total tax valuation of the property situated in the several townships. (98 v. 217.)

§ 5. [Township school districts.] (§ 3890.) Each civil township together with the territory attached to it for school purposes, and excluding the territory within its established limits detached for school purposes, shall constitute a township school district. (97 v. 336.)

See § 32 (§ 3915, *et seq.*), as to township school district.

§ 6. [Special school districts.] (§ 3891.) Any school district, now existing, other than a city, village or township school district, and any school district organized under the provisions

of chapter 5 of this title, shall constitute a special school district. (97 v. 336.)

See § 43 (§ 3928), as to special school districts.

So far as this applies to special school districts that were created under laws which were not of a general nature, it is unconstitutional and void. (State v. Hickman, 27 C. C., 219; Bartlett v. State, 73 O. S., 55.)

§ 7. [Territory must be contiguous.] (§ 3892.) The territory included within the boundaries of any city, village or special school district shall be contiguous. (97 v. 334.)

Contiguous here means that the territory must be such as touches—in actual and close contact. A sub-district is not a school district within the meaning of the statute.

§ 8. [Annexation of territory to cities and villages.] (§ 3893.) Whenever territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district and the legal title to all school property in said territory shall be thereby vested in the board of education of such city or village school district. (97 v. 336.)

When territory which is a part of a special school district is annexed to a village which constituted another school district, such territory did not thereby become a part of the village school district—the directors of the special school district not having consented to such transfer under section 3893 (§ 8), or otherwise. (State ex rel. Board of Education v. Raine, Aud'r, 4 C. C., 72.)

When territory is transferred from one district to another, the district to which the territory is attached is not entitled to a proportionate share of the school funds in the hands of the board of education or the county treasurer for the district from which it was detached, but is entitled to a share of the taxes levied but not collected. (Attorney-General.)

§ 9. [Transfer of territory by agreement between boards of education.] (§ 3894.) A part or the whole of any school district may be transferred to an adjoining school district by the mutual consent of the boards of education having control of such district; to secure such consent it shall be necessary for each of said boards to pass a resolution indicating the action taken and definitely describing the territory to be transferred, and the passage of said resolution shall require a majority vote of

the full membership of each board, to be taken by a yea and nay vote and the vote of each member to be entered on the records of such boards; but such transfer shall not take effect until a map showing the boundaries of the territory transferred is placed upon the records of such boards, and copies of the resolution certified to the president and clerk of each board, together with a copy of said map, is filed with the auditor or auditors of the county or counties in which such transferred territory is situated. (97 v. 336.)

Comments.

Resolution Accepting.

Resolution Releasing.

COMMENTS.—This section provides how territory may be transferred when all parties are willing; the next, when it is presumed all are not willing. It will be observed that several things are to be done before the change becomes effective.

1. Each board of education of the districts concerned must pass resolutions.

2. These resolutions must show the action taken and definitely describe the territory, which must be contiguous. (See § 3892, § 6.)

3. It will take a majority of the full membership of each board. This means that it will require an affirmative vote of a majority vote of the vote when there is a full board. If there is a vacancy unfilled, this will in effect be counted against the resolution.

4. There must be a called aye and nay vote, and each member's vote recorded.

5. There must be a map showing the territory transferred.

6. Copies of each board must be filed with the clerk of the other board.

7. The territory must adjoin the district to which it is transferred.

8. Certified copies of the resolutions must be filed with the auditor of the county in which the transferred territory is located.

9. The maps must be recorded in the records of each board.

Of necessity there must be resolutions passed by each board not exactly alike; one will be in the nature of making an overture and the other an acceptance.

Form of Resolutions Releasing, etc.

Resolved by the board of education of school district, etc., that there be transferred to the school district the following described territory:

Resolved, that a map of such territory be made by and the same be made a part of the records of this proceeding.

Resolved, that a certified copy of these resolutions be given to, president, and, clerk of the board of education of school district.

Resolved, that \$....., the costs herein, be paid by the board of education of district.

Resolved, that upon receipt of this board of a certified copy of resolutions of said board of education of district and the payment by said board of education of district of \$....., costs herein to this board, and the map of the territory transferred be recorded, the same shall become effective and operate from that date.

Resolved, that a copy of these resolutions, together with a copy of said map of the territory transferred, be filed with, the auditor of the county in which the territory affected is located.

Form of Resolutions of Board Accepting, etc.

Resolved by the board of education of district that the following described territory, as shown on the accompanying map, has been, by resolution duly passed, transferred by the board of education of district to this board.

Resolved, that the same be accepted and that a certified copy of these resolutions be given to, president, and, clerk of the board of education of district, and that said map be copied in the proceedings of this board.

Resolved, that an order for \$....., the costs herein expended by the board of education in making said map, etc., be drawn, payable to said board of education of district.

Resolved, that a copy of these resolutions be filed with, auditor of county in which said transferred territory is located.

The transfer of territory ought not to be made while the schools are in session. The proceedings are somewhat similar to the transfer under the old law of territory from one sub-district to another.

A resolution also should be passed by each board as to the division of funds and indebtedness. (See Sec. 3896 (§ 11).)

§ 10. [Transfer of territory by proceedings in probate court.] (§ 3895.) Territory can also be transferred from one school district to another in the following manner: A petition signed by not less than one-half of the qualified male citizens who are electors residing in the territory sought to be transferred and accompanied by a correct map of said territory, shall be filed with the clerks of the boards of education interested and if such boards of education fail to refuse to transfer such territory by mutual consent, as provided for in section thirty-eight hundred and ninety-four of the Revised Statutes of Ohio, within sixty days after the filing of said petition

and map, the petitioner shall file a copy of said petition and map in the probate court of the county in which such territory is situated, or if the territory be in two or more counties, in the probate court of the county containing the largest proportionate share of the territory to be transferred; the petitions [petitioners] shall be required to give satisfactory security for the costs in the sum of one hundred dollars, conditioned that the sureties shall pay all the costs in case the transfer is not granted; the probate judge shall thereupon fix a day for the hearing of said petition and shall cause to be published for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county, a notice of the filing of such petition and of the time of the hearing, and he shall also notify the clerks of the boards of education interested of the filing of the petition and the time of hearing; the probate judge is authorized and empowered to hear and determine the case and give judgment for or against such transfer and his judgment shall be final. In case the finding is against the transfer, judgment shall be rendered against the petitioners for the costs of the proceedings, and if the finding is for the transfer, judgment shall be rendered against each of the boards of education interested for one-half of the costs, or if more than two boards are interested judgment shall be rendered against each for its equal proportionate share of the costs. A certified copy of the findings of the court, together with a copy of the map of the territory transferred, shall be filed in the office of the county auditor by the probate judge. (97 v. 337.)

Comments.

Proceedings in Probate Court.

Petition to Board of Education.

Petition to Probate Court.

COMMENTS.—The former section contemplated that the boards of education of the districts interested should take up the matter of transfer. This gives the right to the citizens to commence proceedings to have the transfer made, and the following should be observed:

1. It must be by petition, which must be signed by not less than one-half of the qualified male citizens who are electors of the territory sought to be transferred. As women are now voters upon school questions, it is not clear why they were not included, *but they are not*. This matter is determined by

an actual canvass of the territory proposed to be transferred at the time the petition is filed.

2. The petition must be accompanied by a correct map of the territory to be transferred.

3. It must be filed with the clerks of the board of education of the districts to be affected. This would involve that there be at least two copies of the petition and map made. When this is done, action by the boards should be requested. If the boards act favorably then the resolutions and forms given under the former section could with slight change be used. If they fail or refuse to act then the matter is taken to probate court.

PROCEEDINGS IN PROBATE COURT.—In the proceedings in probate court, the following points should be observed:

1. The petition must be shown to be properly signed.

2. It must be shown that it was filed with the various boards and that they refused to accept the same or failed to act thereon for sixty days after the same was filed with them. If the boards act, refusing the same, there is no need of waiting sixty days.

3. A copy of the petition and map is to be filed. The original is left with the various boards. If the court grants the petition they have a map of the territory, etc.

4. It must be filed with the probate judge of the county in which the territory is located, or, where the same is in two counties, where the greater portion is.

5. The petitioners must give bond.

6. A time must be fixed for hearing.

7. Notice must be published in two papers of opposite politics for four weeks.

8. The clerks of the various boards must be notified.

9. A certified copy of the finding of the court must be given to the auditor.

The court hears and determines the matter like any other proceedings in court and has power to subpoena witnesses, etc., and the following forms may be of assistance.

Petition to Boards of Education.

*To the Boards of Education of District and District,
..... County, Ohio.*

SIRS:—The undersigned, not less than one-half of the qualified male citizens who are electors of the following described territory,, as shown in the accompanying map and who are now within school district, county, of Ohio, request and petition that said territory be transferred from school district to school district, as provided by section 3895 of the Revised Statutes of Ohio.

.....
.....
.....
.....

Petition to Probate Court.

To the Probate Court of County, Ohio:

SIR:—A petition and accompanying map, of which a true copy is hereto attached, was on the day of, 190., filed with the clerk of the board of education of district, county, Ohio, and on the day of, 190., a like petition and map was filed with the clerk of the board of education of district, county, Ohio, the boards of education interested therein, and said boards of education having refused to transfer the territory as therein prayed for within 60 days from the time the same was filed with the clerks of their respective boards. A copy of said petition with map accompanying is now and here filed in this court, and you are asked to proceed therein as required by section 3895, of the Revised Statutes.

.....,
A Petitioner.

§ 11. [Division of funds and indebtedness when territory is transferred or annexed.] (§3896.) When territory is transferred from one school district to another under the provisions of section 3894 (§ 9) of the Revised Statutes of Ohio, the equitable division of funds or indebtedness shall be determined upon at the time of the transfer. When territory is transferred from one school district to another by proceedings in the probate court, or by the annexation of territory to a city or village, the proper division of funds in the treasury, or in the process of collection, of the board of education of the school district from which the territory is detached, shall, upon application to the probate court of the county in which such territory is situated by either board of education interested, be determined and ordered by said court; in case said board of education is indebted, such indebtedness together with the proper amount of money to be paid to said board of education by the board of education of the school district to which territory is transferred, annexed, or the district created, shall be, in a like manner, determined and ordered by said court. If the territory is situated in two or more counties the application and proceedings shall be had in the probate court of the county containing the largest proportionate share of said transferred territory. The findings of the probate court shall be final. (97 v. 324.)

When territory which is a part of a special school district is annexed to a village which constituted another school district, such territory did not thereby become a part of the village school district—the directors of the special school district not having consented to such transfer under section 3893 (§ 8),

or otherwise. (State ex rel. Board of Education v. Fred Raine, Aud'r, 4 C. C., 72.)

When territory is transferred from one district to another, the district to which the territory is attached is not entitled to a proportionate share of the school funds in the hands of the board of education or the county treasurer for the district from which it was detached, but is entitled to a share of the taxes levied but not collected. (Attorney-General.)

The territory included within a school district must be contiguous.

CHAPTER 2.

CITY SCHOOL DISTRICTS.

SECTION.		SECTION.	
§ 12 (3897)	Boards of education in city districts; number of members; existing boards to fix number of members and divide city into sub-districts; re-districting; when board fails to divide into districts; first election, how conducted; elections held thereafter; change in membership of board.	§ 18 (3897f)	Monthly certifications of deductions from salaries.
		§ 19 (3897g)	Who custodian of fund; duties.
§ 13 (3897a)	Organization; meetings; president; clerk; nomination by petition.	§ 20 (3897h)	Rebate in case of resignation or removal; heirs; legatees or assigns of deceased teacher entitled to half amount paid.
§ 14 (3897b)	Trustees of school teachers' pension fund; number, election and term.	§ 21 (3897i)	Rules and regulations.
§ 15 (3897c)	How fund created.	§ 22 (3897j)	Transfer of fund now existing to trustees herein created.
§ 16 (3897d)	Retirement and pension of teachers; meaning of term "teacher"; amount of pension; who not entitled to pension; how, when fund insufficient to pay pensions.	§ 23 (3897k)	Deductions, fines, penalties and assessments, disposition of.
§ 17 (3897e)	Use of principal and income.	§ 24 (3897l)	Board of education may contribute to pension fund.
		§ 25 (3898)	Attached territory, assignment of and voting in.
		(3899)	Repealed.
		§ 26 (3900)	Redistricting of city districts.
		§ 27 (3901)	Schools for deaf children.
		(3902)	Repealed.
		(3903)	Repealed.

§ 12. [Boards of education in city districts; number of members.] (§ 3897.) In city school districts the board of education shall consist of not less than two members nor more than seven members elected at large, by the qualified electors of the school district, and of not less than two members nor more than thirty members elected from sub-districts by the

qualified electors of their respective sub-districts; provided that in city school districts which at the last preceding federal census contained a population of not less than fifty thousand persons, the board of education shall consist of not less than three members nor more than seven members elected at large, by the qualified electors of such city school districts.

[Existing boards to fix number of members and divide city into sub-districts.] Not later than the first day of July next, after the passage of this act, the present city school board, board of education, school council or other city school legislative body, shall pass a resolution fixing, within the limits prescribed by this act, the number of members of said board of education to be elected at large, and in city school districts where there are members of the board of education to be elected from sub-districts, they shall also, at the same time, fix the number of members of the board of education to be elected by such city sub-districts. The said city school board, board of education, school council or other city school legislative body, in city school districts where there are members of the board of education to be elected from sub-districts, shall, at the same time, to wit: Before the first day of July next, after the passage of this act, subdivide said city school district into sub-districts equal in number to the number of members of the board of education in said city school district who are to be elected from sub-districts therein established. Said sub-districts shall be bounded as far as practicable by corporation lines, streets, alleys, avenues, public grounds, canals, water courses, ward boundaries, voting precinct boundaries or present school district boundaries, and shall be as nearly equal in population as possible, and shall be composed of adjacent and as compact territory as possible. The lines of sub-districts so fixed shall not be changed until after each succeeding federal census.

[Redistricting.] Within three months after the official announcement of the result of each succeeding federal census the board of education of each city school district shall redistrict the said city school district into sub-districts in accordance with the provisions of this act.

[When board fails to divide into districts.] If the city school board of education, school council, or other city school

legislative body shall fail to district or redistrict said city school district as herein required, at the time or times herein specified, then and in that event, upon the application of the president of the board of education the state commissioner of common schools shall, subject to the requirements of this act, forthwith district, or redistrict said city school districts.

[First election; how conducted.] Provided also, that school sub-districts shall be numbered from one up, consecutively, and that at the first election for members of the board of education held after the passage of this act, the members to be elected to the board of education from sub-districts of odd numbers beginning with one, shall be elected for two years, and those elected from sub-districts of even numbers shall be elected for four years, and at the expiration of their respective terms their successors shall be elected for a term of four years; and provided further, that at the said first election the members of the board of education at large in all city school districts shall be elected for terms as follows:

If there be but two members of the board of education elected at large, one shall be elected for two years and one for four years, and if there be more than two, and the number thereof divisible by two, the one-half of such board shall be elected for two years and one-half for four years, but if the whole number of members elected at large be not divisible by two, then the number to be elected for two years shall be the quotient obtained by dividing the whole number to be elected at large, less one, by two, and the remaining members shall be elected for four years.

[Elections held thereafter; change in membership of board.] At the expiration of their respective terms their successors shall be elected for four years. Members elected at large must be electors of the city school district, and members elected from sub-districts must be electors of the city sub-districts from which they are chosen, or of the territory attached to the sub-district for school purposes; a removal from said sub-districts, territory or city school district shall vacate said office. The number of members of the board of education shall not be changed, except at the time of the redistricting herein provided for, within three months after the official announcement of the result of the federal census. All members of boards

of education of city school districts, herein provided for shall be elected at the same time and in the same manner as municipal officers are elected. (97 v. 338.)

See § 2 (§ 3886), as to what territory constitutes city districts.

NUMBER OF MEMBERS.—This section contains a number of provisions that might be made the subjects of separate sections. It will be observed that all cities under 50,000 population have a board elected at large of not less than three members and not more than seven. In cities over 50,000 there shall be not less than two nor more than seven, elected at large and one from each sub-district. The number and boundaries of these sub-districts are to be fixed by the school board after each federal census. This provision as to the cities having a different population, is upon this matter merely a classification and is, no doubt, constitutional.

WHEN ELECTION HELD.—The election is held at the same time municipal officers are elected. Members at large must be residents of the city school district, and those elected from sub-districts must reside in the sub-district. And the board shall be so divided that one-half shall be elected every two years.

See § 88 (§ 3970-12), as to how vacancy filled.

Women are eligible to become members and to vote, see § 78 (§ 3970-12).

As to election generally, see § 76 (§ 3970-10).

Members elected hold until their successors are duly elected and qualified, but no board can increase its own numbers. (State v. Ryland, 3 C. D., 633; 7 C. C., 1; 29 Bull., 396.)

§ 13. [Organization; meetings; president; clerk; nomination by petition.] (§ 3897a.) Boards of education in city school districts shall organize on the first Monday in January after the election held for members of the board of education by the election of one of their members as president and the election of a clerk, who may or may not be a member of the board, the president to be elected for one year and the clerk to be elected for a term not to exceed two years; they shall fix the time of holding regular meetings. Upon the organization of the first boards of education elected under this act, the previously existing boards of education are thereby abolished and said newly elected boards shall be their successors in all respects.

[**Nomination by petition.**] Not less than fifteen days before the election of members of boards of education, nominations of candidates therefor may be made by nomination papers, signed in the aggregate for each candidate by not less than twenty-five qualified electors of either sex of the school district, except that in city school districts such nomination papers shall be signed by petitioners not less in number than one for every one hundred persons who voted at the next preceding general election in such city; and whenever each of such candidates shall be so nominated and his or their names shall be presented to the county board of deputy state supervisors of elections of the county in which such district is situated not less than fifteen days prior to the ensuing election, the said board of deputy state supervisors of elections shall publish on two different days prior to such election the names of such candidates in two newspapers of opposite politics in the school district, if there be such printed and published therein, or, if no newspaper is printed therein, by posting such list of names in at least five public places in the school district. (97 v. 344.)

As to bond of clerk, see § 4050, Revised Statutes (§ 270).

Organization.

Order of Business.

Committees.

Nomination by Petition.

Form of.

ORGANIZATION.—This shall be done the first Monday in January after their election; the president elected for one year and the clerk not exceeding two years. They shall also at this meeting fix the time of holding their regular meetings. This is done after the organization. No business is to be done until after the organization of the board. Only such can participate in this organization as have certificates or credentials of election. At what time in the day they should meet, the statute is silent; probably any reasonable time that a majority agree upon and get together. It would be better if the statute fixed a time of day for this first meeting. A majority of those elected will be a quorum to do business. But to elect an officer requires an aye and nay vote, and a majority of all the members of the board. See § 89 (§ 3982.).

Probably the only thing that should be done at this first meeting is to organize. Vacancies could not be filled, for there would be no official knowledge that the person elected did not intend to qualify until ten days after the board is organized. See § 88 (§ 3981).

Each member must be duly sworn before he enters upon the discharge of his duties; that is, before he participates in the organization. See § 87 (§ 3979).

A record of the proceedings must be kept. See § 92 (§ 3985).

And it is generally provided that no meeting is valid unless the time is fixed by its rules or by laws, § 92 (§ 3985). It would be well if some one of the members elect would see all elect and fix upon a time of the day on the first Monday in January when the meeting for organization would be held.

The president elected, and clerk selected, and a time for meeting fixed, the board should adjourn. At the next meeting the president should present a list of his committees. If there is no quorum present at the appointed time they could adjourn from day to day, until a quorum was present. The president and treasurer cannot be the same person. If the treasurer is made president he will be ousted as treasurer (*The State ex rel. J. B. Moore v. W. J. Heddleston*, 5 Bull., 502); neither could the clerk and the treasurer be the same person.

ORDER OF BUSINESS.—To facilitate and simplify the work of the boards of education at their meetings, the following or a similar order of business is suggested:

1. Election of president.
2. Reading of minutes of previous meeting and correction and approval of same.
3. Presentation of petitions and memorials.
4. Reports of standing committees.
5. Reports of select committees.
6. Unfinished business.
7. New business.
8. Election of teachers and employees.
9. Presentation of accounts and action thereon.
10. Appointment of standing committees.

COMMITTEES.—In order that the work of the board may be systematized, it is suggested that the following standing committees, composed of not more than three members each, be appointed:

1. Committee on school-house sites, buildings and furniture.
2. Committee on text-books and course of study.
3. Committee on rules and regulations for government of teachers and pupils.
4. Committee on fuel and school-house supplies.
5. Committee on finance.
6. Committee on teachers.

The titles of these various committees indicate the character of the work to be performed by each of them, but since the selection of teachers is one of the most important duties to be

performed by any board of education, it is suggested that some plan similar to the following may be adopted :

All teachers desiring positions in the schools of a township should apply, in person, if possible, to one or more members of the committee on teachers appointed by the president of the board, and leave with this committee a certificate, or copy of one, covering the time for which application is made; if an experienced teacher, recommendations from persons living in the district where the applicant last taught should also be presented; if an inexperienced teacher, statements from competent persons regarding the applicant's general fitness for the work should be filed. If the application is for a position in the city school the application should be filed with the superintendent, as he recommends teachers to the board. The committee on teachers should also inform themselves as fully as possible to the needs of the different districts, and the wishes of the patrons in each.

The committee should report to the board of education the result of their investigations, and make such recommendations as their judgment may direct.

The president has a right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost.

NOMINATION BY PETITION.—As a usual thing, the candidates will be nominated by party caucuses or party conventions. But to allow school matters to remain outside of politics and permit the ladies to exercise a choice in candidates, special provision is made for nomination by petition. This petition must be filed with the board of elections at least 15 days before the election. It must be signed by, in the aggregate, not less than 25 qualified voters, male or female, for each candidate. That is, if there are two candidates it must be signed by 50 qualified voters, etc. Of course these signers must reside in the school district, otherwise they would not be qualified voters. This applies to the ordinary school district outside of a city. In a city one person out of every hundred persons voting at the previous election in said city must sign the petition. There being no exception made, this would apply to both the members elected at large and those in the sub-districts.

While nothing in this act states anything about a committee to fill a vacancy, yet it would be well to follow the general law in this respect. See § 76 (§ 3970-10), which requires the names of all candidates to be on one ticket, etc.

The form of the petition may be as follows:

STATE OF OHIO.

Nomination by Petition.

The undersigned, qualified electors of (name of county, township or other civil division), Ohio, in accordance with the provisions of law, make the following nominations, viz.:

Name of Candidate.	Office for which Nominated.	Residence. (with street and number, if any.)	Party or political principles. (Not more than three words.)
.....
.....

We certify that we have not subscribed to any other nomination of candidates for any of the above offices.

The following are the names and address of a committee which we hereby appoint to represent said party, who have power to fill vacancies:

Name.	Residence.	Name.	Residence.
.....
.....

Signature. (To be made in person.)	Residence. (Street and number, if any.)
.....
.....

STATE OF OHIO, }
.....COUNTY, } ss.:

....., 190..
Personally appeared, one of the signers to the above nomination paper, and made oath that the statements therein contained are true to the best of his knowledge and belief, and that his post-office address is

Before me,
(Signature of Officer.)

.....
(Title of Officer.)

§ 14. [Trustees of school-teachers' pension fund; number, election and term.] (§ 3897b.) Whenever the board of education of any school district shall declare by resolution, adopted by a majority vote of the members of said board, that it is advisable to create a school-teachers' pension fund for such school district, said school-teachers' pension fund shall be under the charge, management and control of a board to be known as the board of trustees of the school-teachers' [pension fund for such school] district, which board shall be composed of not less than three, nor more than seven, members, as said board of education shall by resolution declare; if composed of less than five members, one of the members of said board of trustees of the school-teachers' pension fund of such school district shall be elected by the board of education of such school district, and the remaining members by the teachers of the public schools, including the teachers of any high schools, of such district, who have accepted the provisions of this act, as hereinafter provided; if such board is to be composed of five or more members, two of the members of said board of trustees of said school district shall be elected by the board of education of such school district, and the remaining members by the teachers of the public schools, including the teachers of any high schools of such school district, who have accepted the provisions of this act, as herein provided; such election of the members of said board by the teachers to be at a meeting called by the superintendent of schools of such school district, the first election to be at a meeting to be called by such superintendent when one-third of the teachers of the public schools of such school district shall have accepted the provisions this act; the members of said board of trustees of the school-teachers' pension fund shall be elected for such length of time as the board of education of such school district shall by resolution declare, to serve not less than one, nor more than three, years, and shall serve until their successors are elected and qualified, such service to be without compensation. (92 v. 149; 94 v. 306; 95 v. 610.)

Pension Fund.

Form of Resolution.

PENSION FUND.—Before there can be any fund of that kind the board of education of the district must pass a resolution

that it is advisable to create a school-teachers' pension fund for said district. This can only be passed by a majority of all the members of the said board. And it would be advisable to have an aye and nay vote entered upon the minutes upon a call vote.

The pension board shall be not less than three and not more than seven members, as fixed by the board, and they shall serve for such length of time as the board shall determine. The following might serve as a form of resolution and minutes, etc.:

Form of Resolution.

Resolved, that the board of education of school district of county, Ohio, deems it advisable to create a school-teachers' pension fund for said school district. That the board of trustees of the said school-teachers' pension fund shall consist of three members, one to serve one year, and one to serve two years and one to serve three years from date of first election; thereafter there shall be one elected each year and serve for three years, and until his successor is elected and qualified.

Upon call of aye and nay vote, the members voted as follows:

Henry Carter, nay.

Chester Jones, aye.

Peter Wilson, aye.

Mrs. E. P. Lewis, aye.

Ella Smith, nay.

The resolution having received a majority vote of all the members of said board, is declared by the president as carried.

§ 15. How fund created. (§3897c.) Whenever the board of education of any school district shall have declared the advisability of creating a school-teachers' pension fund, as herein provided, the clerk of said board of education shall notify each and every teacher in the public schools and high schools, if any, of said school district, by notice in writing of the passage of such resolution, and require said teachers to notify said board of education in writing within thirty days from the date of said notice whether they consent or decline to accept the provisions of this act; and from and after the election of the board of trustees herein provided for, the sum of two dollars (\$2) shall be deducted by the proper officers from the monthly salary of each teacher who may have accepted the provisions of this act, and from the salary of such new teachers as may hereafter accept the same, as herein provided, said sum to be paid into and applied to the credit of said school-teachers' pension fund, and shall continue to so deduct said sum during the remainder of the term of service of said teacher.

All teachers hereafter appointed in said public school, or high schools, if any, in said school district, shall be notified within thirty days after their appointment by the clerk of such board of education of the election of said board of trustees of said school-teachers' pension fund, and they shall be required to notify said board of education within six months thereafter whether they consent or decline to accept the provisions of this act. All moneys received from donations, legacies, gifts, bequests or from any other source shall also be paid into said fund, or into a permanent fund, and if paid into a permanent fund, the interest only of said fund shall be applied to the payment of pensions. Said board of trustees shall have power to invest said pension fund in the name of said board in bonds of the United States, or the state of Ohio, or of any county in this state, or of any municipal corporation in this state, or of any school district in this state; and said board shall have power to make payments from said pension fund for pensions granted in pursuance of this act. Said board of trustees shall also have power from time to time to make and establish such rules and regulations for the administration of said pension fund as they shall deem best. (92 v. 152; 95 v. 610.)

PARTICIPANTS IN FUND, ETC.—Only such teachers as desire shall participate in the fund. And when the board has passed the resolution declaring such fund advisable, the clerk must notify each teacher, and the teacher must notify the board of education whether he will accept the same. All these notices must be in writing, and the clerk should preserve those received from the teachers, and make a record of the fact of their notification, and the answers received from each.

New teachers must be notified.

§ 16. [Retirement and pension of teachers; meaning of term "teacher"; amount of pension; who not entitled to pension; how, when fund insufficient to pay pensions.] (§ 3897*d*.) Said board of education of said school district, and any union board, or other separate board, if any, having the control and management of the high schools of said school district, shall each of them have power by a majority vote of all the members composing said board to retire on account of physical or mental disability, any male or female teacher under such board who shall have taught for a period aggregating twenty (20)

years, whether before or after, or partly before or after, the passage of this act; provided, however, that three-fifths of said period of service shall have been rendered by said beneficiary in the public schools or high schools of said school district, or in the public schools or high schools of the county in which said school district is located, and the remaining two-fifths of said period of service in the public schools of this state or elsewhere.

[Meaning of "teacher."] "The term 'teacher' under this act, shall include all teachers regularly employed by either of said boards in the day schools, including the superintendents of schools, all superintendents of instruction, principals, and special teachers, and in the estimation of years of service, only service in public day schools or day high schools, supported in whole or in part by public taxation, shall be considered."

[When teacher may retire.] Any teacher shall have the right to retire and become a beneficiary under this act who shall have taught for a period aggregating thirty (30) years, whether before or after, or partly before or after, the passage of this act; provided that three-fifths of said term of service shall have been rendered in the public schools or in the high schools of said school district, or in the public schools or high schools of the county in which said district is located, and the remaining two-fifths of said term of service in the public schools of this state or elsewhere.

[Amount teacher may receive.] Each teacher so retired or retiring shall be entitled during the remainder of his or her natural life to receive as pension, annually, the sum of ten dollars (\$10) for each and every year of service rendered as teacher, but in no event shall such pension paid to any teacher exceed the sum of five hundred dollars (\$500) in any one year, and said pensions shall be paid monthly during the school year; but in no event shall such pension be paid to any teacher until such teacher shall contribute, or shall have contributed, to said fund a sum equal to twenty dollars (\$20) a year for each and every year of service rendered as teacher, but in no event shall this sum exceed six hundred dollars (\$600); but should any teacher retiring be unable to pay the full amount of this sum before receiving a pension, the board of trustees shall, in paying the annual pension to such retiring

teacher withhold on each month's payment twenty per cent. thereof, until the full amount as above provided shall have been thus contributed to the fund; provided further, that if said pension fund shall at any time be insufficient to meet the pensions so provided for, that during the period that such fund is insufficient to make such payment, the amount in said fund during said period shall be pro-rated between the parties entitled thereto. (98 v. 158; 94 v. 305.)

§ 17. [**Use of principal and income.**] (§ 2897e.) Said board of trustees shall have the power to use both the principal and income of said fund for the payment of the premiums herein provided for, and the expense thereof. No portion of said pension fund shall, before its distribution and payment by said board of trustees to the beneficiaries, be liable to be taken or subjected by any writ or legal process against the beneficiary. (92 v. 154; 95 v. 612; 98 v. 158.)

§ 18. [**Monthly certifications of deductions from salaries.**] (§ 3897f.) The clerk of the board of education of said school district, and the clerk of the union board of high schools, or other separate board having the control and management of the high schools of said school district, if any, shall each of them certify monthly to said board of trustees all amounts deducted from the salaries of the teachers as aforesaid, which amounts, as well as all other moneys contributed to said fund, shall be set apart as a special fund for the purposes herein specified, subject to the order of said board of trustees. All moneys belonging to said fund shall be paid only on the order of said board of trustees, entered upon its minutes on warrants signed by the president and secretary of said board. (92 v. 154; 95 v. 612; 98 v. 158.)

§ 19. [**Who custodian of fund; duties.**] (§ 3897g.) The treasurer of said school district shall be the custodian of said pension fund, and shall keep the same subject to the order, control and direction of said board of trustees. He shall keep books of accounts concerning said fund in such manner as may be prescribed by said board, which books of account shall always be subject to the inspection of said board of trustees or of any member thereof. Said treasurer shall execute a bond to said board of trustees with good and

sufficient sureties in such sum as said board of trustees shall require, which bond shall be subject to the approval of said board and be conditioned for the faithful performance of his duties as custodian of said board and treasurer of said board. He shall always keep and truly account for all moneys and profits coming into his hands as such treasurer belonging to such fund, and at the expiration of his term of office shall pay over, surrender and deliver to his successor all securities, moneys and other property of whatsoever kind, nature and description which may be in his hands or under his control as treasurer aforesaid. Said treasurer shall be paid for his services under this act as compensation not to exceed one per cent. annually of the amount paid into said fund during the year. (92 v. 154; 95 v. 612; 98 v. 158.)

§ 20. [**Rebate in case of resignation or removal; heirs, legatees or assigns of deceased teacher entitled to half amount paid.**] (§ 3897*h*.) Any teacher who shall resign or be removed for cause, as aforesaid, shall, upon application within three (3) months after such resignation or removal takes effect, be entitled to receive one-half of the total amount paid by such teacher into such fund. In case of the death of any teacher, the heirs, legatees or assigns of the deceased teacher shall be entitled to receive one-half of the total amount paid by such teacher into such fund upon application therefor, with proof of claim to the satisfaction of the board of trustees. (92 v. 154; 94 v. 308; 95 v. 613.)

§ 21. [**Rules and regulations.**] (§ 3897*i*.) The board of trustees shall make such rules and regulations as it may deem expedient or necessary for its government; which rules and regulations must be adopted, and when adopted, may be amended, by a vote of not less than two-thirds of all the members of said board of trustees. (94 v. 308; 95 v. 613.)

§ 22. [**Transfer of fund now existing to trustees herein created.**] (§ 3897*j*.) Upon the election and organization of a board of pension trustees under this act in any school district of this state, any school-teachers' pension fund heretofore created for said district under any former act, shall be transferred to the board of trustees created under this act by the board or persons having control thereof; and all beneficiaries now receiv-

ing pensions from the fund transferred as aforesaid, shall continue to receive pensions under this act. (95 v. 613.)

§ 23. [**Deductions, fines, penalties and assessments, disposition of.**] (§ 3897k.) The board of education in any school district which has created, or shall hereafter create, a teachers' pension fund, shall pay monthly into said teachers' pension fund all deductions, fines, penalties and assessments made against any of the teachers or other employes of said board for violation of any of the rules or orders of the said board. (97 v. 340; 98 v. 158.)

§ 24. [**Board of education may contribute to pension fund.**] (§ 3897l.) The board of education in any school district which has created or shall hereafter create, a teachers' pension fund, may pay semi-annually out of the contingent fund of such school district, into said teachers' pension fund, not to exceed two per cent. of the gross receipts of said board of education raised by taxation to be applied to the payment of teachers' pensions as hereinbefore provided. (97 v. 340.)

§ 25. [**Attached territory, assignment of and voting in.**] (§ 3898.) When territory is attached to a city school district for school purposes, it shall be the duty of the board of education to assign such territory to the sub-district or sub-districts adjoining the same, and a map showing such assignment shall be made a part of the record of the board; the electors residing in said attached territory shall be entitled to vote for school officers and on all school questions in the sub-district to which they are assigned, and in the election precinct nearest their residence; and in case the board fails to perform this duty, the electors residing in said attached territory shall be entitled to vote in the sub-district and precinct nearest their residence. An elector residing in the city, but not in the city school district, shall not be entitled to vote in said city school district. (97 v. 340.)

Sec. 3899. Repealed (89 v. 79.)

§ 26. [**Redistricting of city districts.**] (§ 3900.) The redistricting of a city school district shall not affect the membership of the then existing board of education in said city school district; all the members thereof shall continue to serve for the full term for which they were elected, but after the expiration of said terms the election of members of the board of education

from sub-districts shall be by the sub-districts as redistricted. (97 v. 341.)

§ 27. [**Schools for deaf children.**] (§ 3901.) Boards of education of city school districts are authorized and empowered to establish and maintain, under their management and control one or more day schools for the education of the deaf youth of school age of the district, the expense of conducting the same to be paid from the school funds of the district in the same manner and from the same funds as other school expenses are paid. (97 v. 334.)

§ 27a. [**Day schools for deaf.**] Sec. 1. That upon application by a board of education of any school district of this state to the state commissioner of schools, he shall grant permission to such board of education, and such board of education shall thereupon be empowered to maintain within its limits one or more day schools, having an average attendance of not less than three pupils, for the instruction of deaf persons over the age of three, residents of the state of Ohio. (98 v. 219.)

[**Report to state school commissioner.**] Sec. 2. Such board of education, which shall maintain one or more day schools for the instruction of the deaf, shall report to the state commissioner of schools annually, and as often as such state commissioner shall direct, such facts concerning such school or schools as he may require. (98 v. 219.)

[**How expenses of school defrayed.**] Sec. 3. The county auditor in each county is hereby authorized and directed to apportion and the county treasurer to pay out of the state common school fund received by such county, to the treasurer or other financial officer of such board of education, maintaining such school or schools for the instruction of the deaf, the sum of one hundred and fifty dollars for each deaf pupil, resident of such county, instructed in any such school for at least nine months during the school year and a share of such sum proportionate to the term of instruction of any such pupil as shall be so instructed less than nine months during such year. If no school shall be maintained in any county but persons residing in such county shall attend such school in another county, then the county treasurer of the county not maintaining such school shall apportion and pay to the financial officer of the board

of education of such other county the amount above specified for each pupil attending such school in such other county. (98 v. 219.)

[**Payment of Expenses.**] Sec. 4. The sums provided in the next preceding section shall be paid by such county treasurer as soon as may be after the receipt by him of the state common school fund in each year, upon satisfactory proof being made to him by the president or clerk of such board of education maintaining such school, of the number of pupils instructed in such school or schools, and their residences, and the period of time such pupil shall have been so instructed in such school or schools for the preceding school year. (98 v. 219.)

[**Appointment and qualification of teachers.**] Sec. 5. All teachers in such schools shall be appointed and employed as other public school teachers are appointed and employed. All persons appointed to teach in any such school shall have had special training for teaching, and shall also have had special training in the teaching of the deaf, including at least one year's experience as a teacher in a school for the deaf. The so-called "oral" system shall be taught by such teachers, and after fair trial of nine months, any of such children shall for any reason, be unable to learn such oral method, then no further expense shall be incurred in the effort to teach such child so unable to learn such oral method in such primary schools. (98 v. 219.)

[**Who considered deaf.**] Sec. 6. For the purpose of this act, any person of sound mind, who, by reason of defective hearing, can not profitably be educated in the public schools, as other children are, shall be considered deaf. (98 v. 219.)

[**Inspection of.**] Sec. 7. The state school commissioner shall select some competent person to inspect all day schools organized under this act, or by other authority and shall cause an inspection to be made of said schools at least twice a year, and said persons so appointed shall make a written report to the state commissioner of common schools of the buildings in which said schools are being held, the method of instruction and all other matter which may seem to be of interest and profit to the education of the children in said schools. (98 v. 219.)

Sec. 3902. Repealed April 25, 1904.

Sec. 3903. Repealed April 25, 1904.

CHAPTER 3.

VILLAGE SCHOOL DISTRICTS.

SECTION.		SECTION.	
(3904)	Repealed.	§ 30 (3910)	Voting in attached territory.
(3905)	Repealed.	§ 31 (3911)	Organization; president; clerk; regular meetings.
(3906)	Repealed.	(3912)	Repealed.
(3907)	Repealed.	(3913)	Repealed.
§ 28 (3908)	Board of education in village districts; membership; election and term.	(3914)	Repealed.
§ 29 (3909)	Newly created village districts; election in.		
Sec. 3904.	Repealed April 25, 1904.		
Sec. 3905.	Repealed April 25, 1904.		
Sec. 3906.	Repealed April 25, 1904.		
Sec. 3907.	Repealed April 25, 1904.		

§ 28. [Board of education in village districts; membership; election and term.] (§ 3908.) The board of education of village school districts shall consist of five members elected at large at the same time and in the same manner as municipal officers are elected, for the term of four years from the first Monday in January after their election or until their successors are elected and qualified. At the first municipal election held after the passage of this act there shall be a board of education elected in all village districts as provided for herein, two to serve for two years, and three to serve for four years, and at the municipal election held every second year thereafter, their successors shall be elected for the term of four years. Upon the organization of said boards, upon the succeeding first Monday in January after their election, the previously existing village boards of education shall be thereby abolished and the newly elected and organized board shall be their successors in all respects. (97 v. 344; 91 v. 121; 88 v. 494; 75 v. 53, § 18.)

See § 3 (§ 3888), as to what comprises a village district.

§ 29. [Newly created village districts; election in.] (§ 3909.) In all incorporated villages not now organized as school dis-

tricts and in all villages hereafter created, there shall be a board of education elected as provided for in section 3908 (§28) of the Revised Statutes of Ohio; provided, however, that if said election be a special election held in a newly created village, the members elected shall serve for the terms as indicated in said section 3908 (§ 28), from the first Monday in January after the last preceding election for members of boards of education, and the board shall organize on the second Monday after the special election. (97 v. 341; 75 v. 53, § 19.)

§ 30. [Voting in attached territory.] (§ 3910.) Electors residing in territory attached to a village school district for school purposes, shall be entitled to vote for school officers and on all school questions, at the regular voting place in the village to which such territory is attached, and should said village be divided into voting precincts, it shall be the duty of the board of education of such village school district to assign such territory to the adjoining precinct or precincts and to have a map prepared showing such assignment, said map to be made a part of the records of the board, and the electors residing in such attached territory shall be entitled to vote in the precinct to which they are assigned, but in case no assignment of territory is made, the elector shall vote in the precinct nearest his residence. An elector residing in a village, but not in a village school district, shall not be entitled to vote in said village school district. (97 v. 334.)

§ 31. [Organization; president; clerk; regular meetings.] (§ 3911.) Boards of education of village school districts shall organize on the first Monday in January after the election of the board, by the election of one of their members president, and the election of a clerk who may or may not be a member of the board, the president to be elected for one year and the clerk to be elected for a term not to exceed two years; and they shall fix the time of holding regular meetings. (97 v. 334.)

Sec. 3912. Repealed April 25, 1904.

Sec. 3913. Repealed April 25, 1904.

Sec. 3914. Repealed April 25, 1904.

See § 13, notes under § 3897a, is to organization, etc.

CHAPTER 4.

TOWNSHIP SCHOOL DISTRICTS.

SECTION.		SECTION.	
§ 32 (3915)	Boards of education in township districts; membership; election and term.	§ 37 (3922)	Centralization by suspension of one or more sub-district schools.
§ 33 (3916)	Attached territory; voting in.	§ 38 (3923)	Joint sub-districts abolished.
(3917)	Repealed.	(3924)	Repealed.
(3918)	Repealed.	(3925)	Repealed.
(3919)	Repealed.	(3926)	Repealed.
§ 34 (3920)	Organization; president; clerk; regular meetings.	(3927)	Repealed.
§ 35 (3921)	Sub-districts recognized.	(3927-1)	Repealed.
§ 36 (3921a)	Director of sub-districts; election; term; duties.	§ 39 (3927-2)	Centralization, submission of question to vote.
		§ 40	An act to provide for the support of normal schools.
		§ 41	Tax, for election.
		§ 42	New election.

See § 76 (3970-10) General election laws applicable.

See § 78 (3970-12) Women may vote.

See § 86 (3978) Oaths of members.

See § 88 (3981) Vacancies in board.

See § 89 (3982) Necessity of quorum.

See § 86 (3978) Special meetings.

See § 92 (3985) Rules of board.

See § 90 (3983) Absence of president.

See § 5 (3890) As to what constitutes.

§ 32. [Boards of education in township districts; membership; election and term.] (§ 3915.) The board of education of township school districts shall consist of five members elected at large at the same time and in the same manner as the township officers are elected, for the term of four years from the first Monday in January after their election [or] until their successors are elected and qualified. At the first township election held after the passage of this act, there shall be a board of education elected in all township districts as provided for herein, two to serve for two years, and three to serve for four years, and at the township election held every second year thereafter, their successors shall be elected for the term of four years. Upon the organization of said boards, upon the succeeding first Monday in January after their election, the previously existing

township boards of education shall be thereby abolished and the newly elected and organized boards shall be their successors in all respects. (97 v. 342.)

RECENT CHANGE.—This and subsequent sections make a complete change in the election, organization and powers of township boards of education. Under the former law the township boards were not voted for directly nor by the electors of the entire township.

The directors were elected by the voters of each sub-district, and these directors constituted the board of education of the district. Formerly three directors were elected in each district, then these three directors organized and elected one of their number as clerk, and this member constituted the director that met with the board of education. Then each sub-district hired its own teacher and made its own contracts generally. Later the law was amended so that there was but one director elected in each sub-district. This was more recently amended so that there was one director elected, who was the member of the board from that district, and two subdirectors, but the power to hire teachers, etc., was in the board.

The election of township officers is now held on the first Tuesday after the first Monday in November of the odd numbered years. (1442 R. S.)

§ 33. [**Attached territory; voting in.**] (§ 3916.) Electors residing in territory attached to a township school district for school purposes, shall be entitled to vote for school officers and on all school questions, at the regular voting place in the township to which such territory is attached, and should such township be divided into different voting precincts, it shall be the duty of the board of education of the township district, to assign such attached territory to the adjoining precinct or precincts; if territory is attached to more than one precinct, a map shall be prepared showing such assignment and said map shall be made a part of the records of the board of education, and electors shall be entitled to vote according to such assignment, but in case no assignment of territory is made, the electors shall vote in the precinct nearest to their residence. An elector residing in the township, but not in the township school district, shall not be entitled to vote in said township school district. (97 v. 342.)

Sec. 3917. Repealed April 25, 1904.

Sec. 3918. Repealed April 25, 1904.

Sec. 3919. Repealed (90 v. 76).

There ought to be no difficulty under the above statute in the elector determining where he should vote.

As to elections in village districts, see § 28 (§ 3908).

§ 34. [**Organization; president; clerk; regular meetings.**] (§ 3920.) Boards of education of township school districts shall organize on the first Monday in January after the election of the board, by the election of one of their members president and the election of a clerk who may or may not be a member of the board, the president to be elected for one year and the clerk to be elected for a term not to exceed two years; and they shall fix the time of holding regular meetings. (97 v. 342.)

See note under § 13 (§ 3897a), as to organization and committees to be appointed and order of business.

The state commissioner of schools advises that there should be monthly meetings of the board. (Annual Report, 1905, p. 7.)

He also recommends that a small salary be allowed, not to exceed \$2.00 per meeting for twelve meetings. An adjourned meeting of a regular session is a regular meeting, and a teacher can be elected at such meeting.

For special meetings, see § 86 (§ 3978).

§ 35. [**Sub-districts recognized.**] (§ 3921.) The division of township school districts into sub-districts as they exist at the time of the passage of this act, shall continue and be recognized for the purpose of school attendance, but the board of education is authorized to increase or diminish the number or change the boundaries of the sub-districts at any regular meeting, a map designating such changes to be entered upon its records. (97 v. 343.)

The term "sub-district," as used in Section 1 of this supplementary act of April 9, 1867 (64 v. 117), does not include the subordinate territorial divisions of separate school districts into which a city or village may be subdivided, but applies exclusively to township or county sub-districts. *Anders et al. v. Spargur et al.*, 19 O. S., 577.

A sub-district does not have the power of suing or being sued, it is a mere geographical division of territory. *Woodlawn Special vs. Evandale Special*. *Hamilton Common Pleas*. April 22, 1907.

Different Modes of Altering Sub-Districts.

Resolved by the board of education of township, That there be transferred and united with sub-district number, so much of sub-district number, as is bounded as follows: [*describe boundary.*]

Resolved by the board of education of township, That sub-district number is hereby abolished, and there is hereby trans-

ferred to and united with sub-district number, so much of the territory of said abolished sub-district as is bounded as follows: [*describe boundary*], and so much of said abolished sub-district as is not herein united with sub-district number, is transferred to and united with sub-district number, This resolution shall take effect on the day of, 19..

Resolved by the board of education of township, That so much of sub-district number, as is bounded as follows: [*describe boundary*], be cut off from said sub-district, and that so much of sub-district number as is bounded as follows: [*describe boundary*], be cut off from said sub-district, and that the territory thus cut off from sub-districts numbers and, respectively, is hereby consolidated and formed into a new sub-district and designated sub-district number of township.

Resolved by the board of education of township, That sub-districts numbers and are hereby abolished, and that the territory included in said sub-districts at the time of their abolishment is hereby consolidated and formed into a new sub-district, and designated sub-district number of township. This resolution shall take effect on the day of, 19..

NOTE.—When a new sub-district is formed the township board should appoint a director as provided in section 3921a (§ 36).

§ 36. [Director of sub-districts; election; term; duties.] (§ 3921a.) In all township districts the schools of which are not centralized or consolidated there shall be elected by ballot on the second Monday of April, 1905, and annually thereafter in each sub-district, by the qualified electors thereof, one competent person, having the qualifications of an elector therein to be styled director. In all cases of tie votes at an election for director the judges of election shall decide the election by lot; and in other cases of failure to elect directors or in case of a refusal to serve, or in case where vacancies exist from any cause, the township board of education shall appoint a director for such sub-district. The director of each sub-district shall post written or printed notices in three or more conspicuous places in his sub-district at least six days prior to the election, designating the day and hour of opening, and the hour of closing the election.

[Where held.] The election shall be held at the school house in the sub-district. The meeting shall be organized by appointing a chairman and secretary, who shall act as judges of the election under oath or affirmation, which oath or affirmation may be administered by the director of the sub-district, or any other person competent to administer such an oath or affirmation, and the secretary shall keep a poll-book and tally-sheet, which shall be signed by the judges, and delivered

within eight days to the clerk of the township board of education.

[**Meetings of district and other matters.**] The qualified electors of the sub-district may hold other meetings at any time upon the call of the director or of any five electors. Five days' notice shall be given of such meetings by posting notices in five public places in the vicinity. The director of each sub-district shall preside at the school meetings of the district, record their proceedings, and shall act as the organ of communication between the inhabitants and the township board of education. He shall take charge of the school house and property belonging thereto under the general order and direction of the township board of education and preserve the same and when so ordered by the board shall make all temporary repairs of the school house, furniture and fixtures, and provide the necessary fuel for the school, reporting the cost thereof to the board of education for payment.

[**Takes enumeration.**] The director of each sub-district shall take the enumeration of his sub-district and return the same to the clerk of the township board of education in the manner prescribed by law. (97 v. 343.)

Comments.

Notice of Sub-District School Meeting for the Election of Director.

Notice of Election in a New Sub-district.

Form of Poll-book.

Form of Tally-sheet.

Form of Minutes of Sub-district School Meeting.

Form of Certificate of Election of School Director.

Oath of Judges of Election.

Minutes of Appointment of School Director.

Certificate of Appointment of School Director to Fill Vacancy.

Oath of School Director.

Special Meetings in Sub-district.

Notice.

COMMENTS.—The board of education may remove or suspend the director for cause. Section 206 (§ 4017).

This section is an innovation. It provides for the election of a director in each district, who is not a member of the board, but is the *organ of communication between the inhabitants of the districts and the board of education*. And he is the agent of the board in looking after the school house, etc. But he can make no contracts unless authorized by the board of education. If a meeting is desired of the people of the

district, they may call one, at which he is to preside. He is elected in the same manner that the director under the former statute was. When there is a vacancy from failure to elect or any cause, his successor would be appointed by the board to serve until the next annual election. No compensation is provided, but he is to make the enumeration of his district. If an appointment is made by the board the clerk must notify the appointee. Section 206 (§ 4017).

NOTICE.—At least six days prior to the second Monday of April of each year it is the duty of the director of each sub-district to post up in three or more public places, where they are likely to be seen, notices of such school election, designating the day, and *the hour of opening and closing* the election

In the law pertaining to such notices a day is held to be indivisible. Hence a notice issued on any day allows the whole of that day to be included in the six or other number of days' notice, provided for by a statute. Since the six days must all expire before the meeting begins, it must also expire before the day begins on which the meeting is held, the day itself being but a point of time. The acts of a meeting held on any other day than that expressed in the notice are invalid.

Form of Notice of Sub-District School Meeting for the Election of Director.

Notice is hereby given to the qualified voters of sub-district No., of township, county, Ohio, that the next annual school meeting for the election of a school director in said district will be held at the school house (or usual place) in said sub-district, on Monday, the day of April, 190., beginning at o'clock P. M. (A. M.) and closing at o'clock P. M. (A. M.).

.....
Director.

Notice of Election in a New Sub-District.

WHEREAS. The board of education of township, county, did, at their last regular meeting, the third Monday of, abolish sub-district number [or sub-districts numbers and] and form from the territory of said sub-district, and so much of sub-district number as is bounded as follows: [*describe boundary*], a new sub-district, to be known as sub-district number

Therefore, notice is hereby given to the qualified voters of said sub-district thus organized and designated, that a meeting for the election of a director will be held at, on the day of, from .. o'clock to .. o'clock, said election to be conducted as prescribed in § 3922 (§ 37).

By order of the Township Board.

....., 19..

.....
Clerk.

The above notice to be posted in three or more conspicuous places at least six days prior to the election.

A notice for a school election must state the purpose for which it is to be held, and no other business can be legally transacted thereat. (14 Vermont, 300.)

The evident intent of the law requires that when the polls are once opened, they should be kept open until the hour prescribed for finally closing; but the statute on the conduct of elections, Section 2929, is said to be directory, and if so, “a departure from its strict observance will not necessarily invalidate an election, where no fraud has been practiced and no substantial right violated.” (Fry v. Booth, 10 O. S., 25.)

It is presumed that the same principle holds in the school law. But the burden of proof will be on the party denying the violation of personal rights in the case.

The polls should be opened and closed at the precise time designated by the statute, if the statute fixes the time, or by the notice, if so fixed.

Form of Poll-book.

Of the election held in sub-district No., in the township of, in the county of and state of Ohio, on Monday, the day of April, in the year A. D. 190..

A. B., chairman, and C. D., clerk, judges of said election, were severally sworn, as the law directs, previous to their entering on the duties of their respective offices.

Number and Names of Electors.		Number and Names of Electors.	
No. 1	.....	No. 5	.....
2	.....	6	.....
3	.....	7	.....
4	.....	8	.....

It is hereby certified that the number of electors who voted at this election is

.....Chairman,
.....Secretary,
Judges.

See section 2960 R. S. (§—).

Form of Tally Sheet

Of the election held in sub-district No., in the township of, in the county of, and State of Ohio, on Monday, the day of April, in the year A. D. 190.., to elect a director for said sub-district.

The law provides that the meeting shall be organized by the appointment of a chairman and secretary, and they shall take an oath or affirmation, which oath may be administered by the director or other competent person.

The following will do for a form of oath :

Oath to Judges of Election.

You do solemnly swear that you will support the Constitution of the United States and the State of Ohio, and that you will faithfully and honestly discharge the duties that will become yours in the conduct of an election of a school director in sub-district No., township, county, Ohio. This you will to the best of your ability, so help you God.

If there should be no election held or there should be a vacancy, some one in the district should report that matter to the board, and the board would appoint some one to fill the place. It might be well to have a special election in the sub-district to ascertain the choice of the inhabitants.

Minutes of Appointment of School Director.

Whereas,, the director in sub-district number, township, county, Ohio, has resigned (died, or refused to serve, etc.), and no election having been held to fill such vacancy as prescribed by law;

Therefore the board of education appoints director in said sub-district, who shall hold his office until the time of the next annual election, and until his successor is elected and qualified.

.....
Clerk of said Township Board.

Certificate of Appointment of School Director to Fill Vacancy.

This is to certify that has been appointed director of sub-district number, township, county, Ohio, to fill the vacancy caused by of, said appointment to extend until the next annual election as provided for in section 3921a.

....., Ohio,
....., 190..

Attest:
....., Clerk. President.

Oath of School Director.

The following oath, which may be administered by the clerk or any other member of the board of education, should be taken by each director before entering upon the discharge of his duties.

You,, do solemnly swear [or *affirm*] that you will support the Constitution of the United States, and the Constitution of the State of Ohio, and that you will faithfully and impartially discharge the

duties of director in and for said sub-district, number, township, county, Ohio, according to law and the best of your ability.

See section 36 (3921a).

SPECIAL MEETINGS IN SUB-DISTRICT.—If there is a desire to hold other meetings in the sub-district, the director may call the same, or any five electors may do so. If the director be present he is chairman of the meetings, and he shall see that there is a record of the proceedings made. The board of education ought to supply each director with a blank book in which a record of the proceedings of all meetings should be kept. When a meeting is called by the director or the electors, a notice must be made of such meeting. This notice must be posted up for five days before the meeting is held. It should state the object of the meeting, and may be in the following form:

Form of Notice of Sub-District Meeting.—Notice.

The school electors of sub-district number, township, county, Ohio, are hereby notified that there will be a meeting of the electors of said district at the school house therein on the day of, 190., at o'clock, for the purpose of considering the following matter:.....

Director.

§ 37. [Centralization by suspension of one or more sub-district schools.] (§ 3922.) The board of education of any township school district is authorized to suspend the schools in any or all sub-districts in the township district, but upon such suspension the board must provide for the conveyance of the pupils residing in such sub-district or sub-districts to a public school in said township district, or to a public school in another district, the cost of such conveyance to be paid out of the funds of the township school district; or the board may abolish all the sub-districts providing conveyance is furnished to one or more central schools, the expense of such conveyance to be paid out of the funds of the district. When transportation of pupils is provided for, the conveyance must pass within at least the distance of one-half of a mile from the respective residence of all pupils, except when such residences are situated more than one-half of a mile from the public road; but boards of education shall not be required to provide transportation for pupils living less than one-half of a mile from the school house. (97 v. 344.)

Centralization Defined.
 Scope of Act.
 Form of Resolution.

Advantage of Centralization.
 Control of District.

The former law defined centralization as follows:

"For the purposes of this act the word 'centralization' is hereby defined as a system of schools in a township providing for the abolishment of all sub-districts and the conveyance of pupils to one or more central schools." (94 v. 317.)

SCOPE OF ACT.—Under this section the school of an entire township might be centralized. It is probably intended, however, to be applied where a few districts are to be centralized, and even then it might be well to gather the consensus of opinion in the various districts by submitting the matter to a vote, as provided in section 3927-2 (§ 39). If centralization is decided upon, then conveyance for all pupils must be provided for those living more than one-half mile from the school house.

Action of the board should be taken by resolution. Unless demanded by some member there need not be an aye and nay vote taken, nor would it require an affirmative vote of more than one-half of all the members of the board to carry the resolution, but it would be advisable to follow section 89 (§ 3982) in such matters.

The resolution should merely state what districts are centralized, and where the central school is to be held.

It might be in the following form:

Form of Resolution.

Resolved, by the board of education of, township, county, Ohio, that sub-districts No., and be and the same are hereby centralized, and the school for the same will hereafter be held in the school house situated in sub-district No., and that said centralized district be known as centralized school district No. of township, county, Ohio.

CONTROL OF DISTRICT.—Such centralized school district is under the direct supervision of the township board. There is no director of schools therein. Upon the centralization of the schools such office is abolished. Of course, before the centralization can be made effective, the board must provide conveyance for pupils, etc.

ADVANTAGES OF CENTRALIZATION.—In the state commissioner's school report for 1905, he says that there are now seventy-five townships in thirty-one counties, centralized in whole or in part, and that:

"In the past year committees have been appointed by different townships to investigate this subject in the north-

eastern part of the state, where centralization has been in progress to a greater or less extent since 1892. These committees have interviewed patrons, teachers, pupils and drivers, and so far as I have been able to learn the reports from all parties interested have been exceedingly favorable.

“Some of the advantages resulting from the centralization of schools are the following:

“It insures a much better attendance of pupils and greatly reduces the number of cases of tardiness and truancy.

“It gives an opportunity for a better classification of the schools and proper grading of pupils.

“It encourages supervision and gives the superintendent a much more favorable chance for thorough inspection of the work of the lower grades.

“It limits the field of work for each teacher and gives an opportunity for a more thorough preparation.

“It gives fewer classes to each teacher and longer recitation periods, insuring more thorough work.

“It gives the boys and girls of the rural schools the benefit of such special branches as music and drawing under a special teacher employed by the board of education, if the patrons so desire.

“It encourages the formation of good township high schools, and gives to the boys and girls in the township districts the same advantages enjoyed by children in the city districts.

“It favors the teaching of the elements of agriculture in the rural schools.

“It tends to prevent difficulties which often arise on the way to and from school, and tends to protect the health and morals of the children.

“Better equipment in the way of apparatus and library for the different grades can be provided for less money.

“The children have the benefit of modern conveniences in the way of ventilation and sanitary arrangements.

“Better janitor service can be secured.

“It helps to solve a difficult problem for the boards of education where the enumeration in several sub-districts is very small, school buildings are in need of extensive repairs or perhaps new buildings may be needed.

“It tends to bring good roads.

“The cost of maintaining this system varies according to local conditions. If in some instances it is a little more than under the old plan the universal testimony is that the additional advantages and the increased efficiency of the schools more than compensate for the increased outlay.

“In some townships the arrangement of the sub-districts and the condition of the roads at certain seasons of the year may be such as to make centralization impracticable, but

where the conditions are at all favorable this plan is earnestly commended to the favorable attention of township boards of education."

§ 38. [**Joint sub-districts abolished.**] (§ 3923.) Joint sub-districts are hereby abolished and the territory of such districts, situated in the township in which the school house of the joint sub-district is not located, shall be attached for school purposes to the township school district in which said school house is located, and shall constitute a part of said township school district, and the title of all school property located in said joint sub-district, is hereby vested in the board of education of the township to which the territory is attached. A map of such attached territory shall be prepared under the direction of the board of education of the township district to which such territory is attached, and shall be made a part of the records of said board, and a copy of the same shall be filed with the auditor of the county in which said territory is situated, or if the territory be in two or more counties, said map shall be filed with the auditor of each county. (97 v. 344.

Sec. 3924. Repealed April 25, 1904.

Sec. 3925. Repealed April 25, 1904.

Sec. 3926. Repealed April 25, 1904.

Sec. 3927. Repealed April 25, 1904.

Sec. 3927-1. Repealed April 25, 1904.

The boundaries of the district remain the same as it was before. But the complete control of the school and its property passes to the township, in which the *school house* is located. A director would be elected the same as in other sub-districts, and should be voted for by all the electors residing within the boundaries of the sub-district. A map of the attached territory must be made and filed with the auditor of each county in which the territory is located.

§ 39. [**Centralization, submission of question to vote.**] (§ 3927-2.) A township board of education may submit the question of centralization, and upon the petition of not less than one-fourth of the qualified electors of such township district, must submit such question to a vote of the qualified electors of such township district, and if more votes are cast in favor of centralization than against it, at such election, it shall then become the duty of the board of education, and

such board of education is required to proceed at once to the centralization of [the] schools of the township, and if necessary purchase a site or sites and erect a suitable building or buildings thereon; provided, that if, at the said election, more votes are cast against the proposition for centralization than for it, the question shall not again be submitted to the electors of said township district for a period of two years. When the schools of a township have been centralized, such centralization shall not be discontinued within three years thereafter, and then only by petition and election as required herein and if at such election more votes are cast against centralization than for it, the division into sub-districts as they existed prior to centralization, shall be thereby re-established at the next regular election, and sub-district directors shall be elected as provided in § 3921a (§ 36) of this act. (97 v. 344.)

Comments.

How Centralized.

Election—Former Law.

Resolution.

Form of.

Petition to Board for.

Centralization.

Decentralization.

When the schools of a township have been centralized no part of the territory comprised in such centralization can be taken to form a special school district. *Fulks v. Wright*, 72 O. S., 547.

HOW CENTRALIZED.—The township board may, on their own motion, submit the question to a vote, and on petition of not less than one-fourth of the qualified electors of said township district the board must submit the question. The township district does not necessarily coincide with the boundaries of the township. It may include more or less. All electors in the township district are entitled to vote on this proposition. Women can not vote on this proposition; the law only allows them to vote for members of the board. The statute provides both how the districts may be centralized and decentralized.

ELECTION, ETC.—Nothing is said in the present law about the conduct of this election. In the former law it was provided that all elections ordered by a board of education in pursuance of section two of this act shall be held at the usual place or places of holding township elections, at a regular or special election, as may be determined by the board, and notice shall be given and the election conducted in all respects as provided by law for the election of township officers, and the ballots shall have printed thereon "For centralization—Yes." "For centralization—No." (94 v. 317) (§ 3921-3).

No such provision is found in the present law, and I presume the same would be controlled by the following section of the Revised Statutes:

(2996-2.) Unless the act so providing for the submitting of any question to the qualified voters of any township, county, village or city also provides for the calling of a special election for that purpose, no special election shall be so called, and the question so to be voted upon shall be submitted at a regular election in such township, county, village or city, and notice that such question is to be voted upon shall be embodied in the proclamation for such election. (90 v. 130.)

The law does provide as to the number necessary to carry the same. If section 2996-2, R. S., controls, then the election would be under the control of the county election board.

The matter, however, should be printed on a separate ballot, for the reason that possibly all persons entitled to vote on township matters could not vote on the school matter, the boundaries not being the same; and for the further reason that in determining whether the question is carried, this may be necessary. If a ballot is blank it is not counted either way.

RESOLUTION, ETC.—When the board, either upon its own motion, or by petition presented, decides upon submitting the question to the voters, a resolution to that effect should be passed and certified to the county board of elections. The following might serve as a form of resolution:

Form of Resolution.

Resolved by the board of education of township school district, county, Ohio, that a petition having been presented to us requesting that the question of centralizing the schools of this school district be submitted to the qualified electors of said district, which petition was signed by at least one-fourth of the qualified electors of this township school district.

Resolved, that the said question be submitted to the qualified voters of said school district on (at the time of regular election), and that a copy of these resolutions be certified by the clerk of this board to the board of elections of county, Ohio, to proceed according to law.

It may be possible that the board of education might order a special election.

Form of Petition to Board for Vote Upon Centralization.

To the Board of Education of School District.

The undersigned, constituting at least one-fourth of the qualified electors in the township school district, respectfully petition your honorable board that the question of the centralization of the schools of the school district of township, county, Ohio, be submitted to a vote of the qualified electors of said school district,

and that your body proceed therefore as provided in § 39 (§ 3927-2, R. S., Ohio).

.....

DECENTRALIZATION.—If it is desired to do away with centralization after it has once been adopted, it can only be done by petition and election three years after it has been centralized. If more votes are cast against centralization than for it, then the old sub-districts are re-established in the same conditions that they were before it was decided to centralize the schools.

§ 40. [To provide aid for the support of normal schools.]

Sec. 1. That the trustees of any township in the state of Ohio, in which a normal school is organized and conducted or may be established hereafter, are authorized to levy annually a tax, not exceeding two mills on the dollar upon all the taxable property of the township for the purpose of aiding in the support of such normal school. (97 v. 389.)

§ 41. [Tax for Election.] Sec. 2. Before the tax may be levied, the question of making a levy for the purpose named in section 1, herein, shall be submitted to the qualified electors of the township, at a special or general election to be held in such township, due notice of which shall be given at least twenty days prior to the election, by publication in some newspaper of general circulation in the township; and provided a majority of the votes cast at such election upon said question of tax levy is in favor of levying the tax, then the trustees of the township thereafter shall make the levy annually and report the same to the county auditor for collection as other taxes, and when collected, to be paid over to the duly qualified and acting treasurer of the board of trustees of such normal school. (97 v. 389.)

§ 42. [New election.] Sec. 3. At any time after four years from the date of an election held in accordance with the provisions of section 2 of this act, another election may be petitioned for, and shall be ordered by the trustees of the township, provided the petition shall be signed by at least forty per cent. of the qualified electors of the township. (97 v. 389.)

CHAPTER 5.

SPECIAL SCHOOL DISTRICTS.

SECTION.		SECTION.	
§ 43 (3928)	Formation of special school district, proceedings for.	§ 50 (3935)	Abandonment or continuance of special district, election for.
§ 44 (3929)	Further proceedings in probate court.	(3936)	Repealed.
§ 45 (3930)	Boards of education in special districts; membership; election and term.	(3937)	Repealed.
§ 46 (3931)	Elections, how conducted.	(3938)	Repealed.
§ 47 (3932)	Election in newly created special district.	(3939)	Repealed.
§ 48 (3933)	Organization of board of education; president; clerk; regular meetings.	(3940)	Repealed.
§ 49 (3934)	Transportation of pupils in special districts.	(3941)	Repealed.
		(3941a)	Repealed.
		(3942)	Repealed.
		(3943)	Repealed.
		(3944)	Repealed.
		(3945)	Repealed.
		(3946)	Repealed.
		(3946a)	Repealed.
		(3947)	Repealed.
		(3948)	Repealed.
		(3949)	Repealed.
		(3950)	Repealed.

§ 43. [Formation of special school district, proceedings for.] (§ 3928.) A special school district may be formed of any contiguous territory, not included within the limits of an incorporated city or village, which has a total tax valuation of not less than one hundred thousand dollars.

[Petition.] To establish a special school district, a petition signed by not less than ten male citizens who are electors of the proposed special district shall be filed in the office of the probate judge of the county in which such special district is situated or if said district is situated in two or more counties, then with the probate judge of the county having the greatest total tax valuation in said proposed district;

[Description of territory.] Said petition shall set forth the desires of the petitioners, shall contain a description of the territory to be included in the proposed special district, and shall be accompanied by a statement giving the total tax valuation of said territory certified to by the county auditor or auditors and also an accurate map of the territory to be included

in said district, the same to be prepared to the satisfaction of the probate judge; said petition shall also be accompanied by an undertaking of one or more of the petitioners, with security to the satisfaction of the judge, in the sum of one hundred dollars, conditioned that the parties entering into the undertaking shall pay all the costs of the proceedings if a special school district is not created, and in such case the probate judge shall render judgment against the parties to the undertaking for all the costs of the proceedings. In case the petition is granted the costs shall be taxed against the special school district thereby authorized, and shall be paid by the board of education of said special school district, thereafter elected, from any funds that may come into its possession.

[**Remonstrance.**] A remonstrance signed by one or more of the male citizens who are electors of the proposed district may be filed with the probate judge, and shall be considered on the hearing of the petition. Nothing herein contained shall be so construed as to abolish any special school district now existing, but all such districts, whether created under the provisions of a general or special act, including the territory now constituting such special district, shall, unless changed under the provisions of this chapter, continue to be and remain and be recognized and regarded as legal special school districts, excepting, however, such special school districts which do now or may hereafter include within their boundaries an incorporated city or village, and in such cases such special district shall become a city or village school district with or without territory attached or detached, as the case may be. And all officers and members of boards of education of existing special school districts heretofore created, whether by special or general act, shall continue to hold and exercise their respective offices and powers thereof, until their successors are elected and qualified as provided herein; provided that all such officers of such districts created by special act shall hold such offices only until the first Monday of January following the first election for school officers to be held after the passage of this act, at which election their successors shall be elected. (97 v. 345.)

Form of Petition.	Remonstrance.
Special School Districts, etc.	Reasons for Establishing, etc.
Procedure to Establish.	Unconstitutional.

Form of Petition.

To the Honorable the Probate Judge of County, Ohio.

The undersigned respectfully represent that they are male citizens who are electors of the territory hereinafter described, and that they request that a special school district be established, herein described, for the following reasons:

Said special school district is to be bounded and described as follows:

Accompanying this petition and made a part thereof, marked "Exhibit A," is an accurate plat of the territory of said district, and also accompanying the same is a statement of the total tax valuation of the same, certified by the auditor of county, marked "Exhibit B."

.....

SPECIAL SCHOOL DISTRICTS, ETC.—The above section provides several things: 1. How new districts may be established. 2. Present special school districts to remain as they are. 3. Except when they are incorporated cities, villages, then they shall become city or village districts. 4. Old officers shall remain in office until new officers are elected. Under the old law chapter five related to joint sub-districts; under the new code there are no joint sub-districts. Section 3888, R. S., § 3, specifically provides what shall constitute a special school district. The population does not seem to be an important element, but the tax valuation of its property is an essential.

PROCEDURE TO ESTABLISH.—It must be formed of contiguous territory not within the limits of any incorporated city or village, and it must not be territory of another special district, *Scott v. McCullough*, 72 O. S., 538, nor of a centralized district, *Fulks v. Wright*, 72 O. S., 547. It must have a tax valuation of at least \$100,000. The petition must be signed by not less than ten male electors of the proposed district; it must contain a description of the territory included in the proposed district, and must be accompanied with an accurate map of the same, and a total tax valuation thereof certified by the auditor, etc.

Remonstrance.

To the Honorable the Probate Judge of County, Ohio.

The undersigned respectfully represent that they are citizens and electors of the territory described in a petition filed in this court by and others for the establishment of a special school district, and they remonstrate against the establishment of the same for the following reasons: and ask that the same be not established and the proceedings brought on said petition dismissed.

.....

REASONS FOR ESTABLISHING, ETC.—What shall be sufficient reason or reasons for the court to grant a new special school district the statute is silent. Neither is it clear who shall be heard to oppose or advocate it. None of the residents of the proposed district have a right to file a written remonstrance. But notice must be given to the clerks of all the boards of education that have territory in the proposed district. Are the interests of the residents of the proposed district to be alone considered, or must the question as to how the proposed special district will affect the school districts from which the special districts are taken, also be taken into consideration? The petition must be signed by the residents of the proposed district. The remonstrance likewise must be signed by such residents. If it is sought to abandon such district, § 50 (§ 3935), or if the board of such special district wishes to have the question of its continuance submitted to a vote, only the electors of the special district are considered, and if a majority of such electors vote its discontinuance, it goes back to the various districts from which it came, no matter how it may affect such districts. The legislature has said that there shall be city districts, village districts, township districts and special districts, but from the fact that special districts can not be formed from territory in an incorporated city or village, this special district must be carved out of a township district, and the reason for such special district seems to be founded upon the idea that by the creation of the same the people of the proposed district will be enabled to have better school facilities than they had before, and therefore it would seem that the welfare of the people only of the proposed district is to be considered in the determination of the question whether or not the district should be established. And from the fact that home rule has always been favored in school matters, if the judge is satisfied that they will have merely as good schools as they now have, and no serious result occurred to the districts from which it is taken, it should be granted. But it would not be unwise to consider also what effect it will have on the remaining territory. If it

leaves it in such a condition that the proper education of the youth therein will be endangered, it ought not to be hastily granted.

UNCONSTITUTIONAL.—That part of § 43 (§ 3928 R. S.), which attempts to preserve special school districts, which were created by special acts of the legislature, is special legislation, and under the recent rulings of the supreme court as that character of legislation can not be considered otherwise than as being unconstitutional and void. *State v. Hickman*, 27 C. C., 219; *Bartlett v. State*, 73 O. S., 55.

Such special districts being illegal and void, the territory therein will go back to the township board of education from which it was taken, and so will all the property therein, as well as the government of the school, but all contracts made before the law was declared unconstitutional by the board of education of such special school district are valid and binding upon the board that succeeds it. *Beck v. Rocky River Bd of Ed.*, 14 Dec., 317.

In such cases it would be proper to proceed as provided in § 3929 R. S. (§ 44), and have the special district re-established.

§ 44. [Further proceedings in probate court.] (§ 3929.) Upon the filing of a petition in the probate court for the establishment of a special school district, the judge thereof shall fix a time for the hearing of the same, which shall be within sixty days of the filing thereof; he shall thereupon cause to be published for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county where the petition is filed, notice of the filing of such petition and the time of the hearing thereon; such notices shall also be mailed to the clerk or clerks of the board or boards of education having territory in the proposed special school district. The probate judge is authorized to hear and determine the question of the establishment of such special school district, may subpoena and examine witnesses under oath, may change the boundaries of the proposed special school district, shall fix and determine the amount of money due and payable to said special district from the surplus money in the treasury or in process of collection in the district or districts from which it was formed, or in case of the indebtedness of such district or districts, he shall determine the amount of money due and payable by the special school district to the district or districts from which it was formed, and in either case the amount so found due shall

be [a] valid and binding obligation upon the board of education of such district or districts. The fees in cases involving the establishment of special school districts shall be the same as in civil cases, and the jurisdiction of the probate court in such cases shall be exclusive. (97 v. 346.)

HEARING, ETC.—The judge must proceed as the statute directs, and, having given the notice required, proceed to hear the question whether or not the district should be established; he may change the boundaries and arrange the manner of division of funds, etc. There is no appeal from the probate judge's decision, except in an indirect way. If the people of the special district are not satisfied they can have the matter submitted to a vote, under § 50 (§ 3935.)

§ 45. [Boards of education in special districts; membership; election and term.] (§ 3930.) The board of education of special school districts shall consist of five members elected at large at the same time and in the same manner as the township officers are elected, for the term of four years from the first Monday in January after their election or until their successors are elected and qualified. At the first township election held after the passage of this act, there shall be a board of education elected in all special districts as provided for herein, two to serve for two years, and three to serve for four years, and at the township election, held every second year thereafter, their successors shall be elected for the term of four years. Upon the organization of said boards, upon the succeeding first Monday in January after their election the previously existing boards of education of special school districts shall be thereby abolished and the newly elected and organized boards shall be their successors in all respects. (97 v. 346.)

See matter under § 95 (§ 3987).

§ 46. [Elections, how conducted.] (§ 3931.) Elections in special school districts shall be held by the regular election officers of the township in which such special districts are situated, and if a special district is situated in two or more townships, the election shall be held by the election officers of the different townships for the electors residing in each township respectively. At least twenty days prior to the first election

held under this act, it shall be the duty of the clerk of the board of education of each special school district to notify the deputy supervisors of elections of the county in which the district is situated, or if said district be in two or more counties, he shall notify the deputy supervisors of each county of the names of the voting precincts having territory in such special school district, and the probable number of electors in each precinct, in order that said deputy supervisors shall be enabled to prepare ballots and election supplies and distribute the same to the proper precincts, and in each precinct there shall be separate ballots, ballot boxes, poll-books and tally-sheets for each school district having voters therein. (97 v. 346.)

§ 47. [Election in newly created special district.] (§ 3932.) When a special school district is created, a mass-meeting of the electors in such district shall be called by the posting of notices in five public places in the district, setting forth the time and place of said meeting and signed by at least three electors of the district. The electors assembled at said meeting shall elect a chairman and secretary and fix the time for holding the first election for members of the board of education, the time so fixed shall not be within twenty-five days of the time of holding said mass-meeting. The chairman and secretary of said meeting shall immediately post notices in five public places within the district, giving the date of the election, and shall notify the deputy state supervisors of elections as provided in § 3031 (§ 46) of the Revised Statutes of Ohio. The board thus elected shall organize on the second Monday after the election, and the term of the members shall be as indicated in § 3930 (§ 45) of the Revised Statutes of Ohio, from the first Monday in January after the last preceding annual election for members of boards of education, or until their successors are elected and qualified. (97 v. 347.)

Procedure, etc.
Notice.

Notice of Time of Election.

PROCEDURE, ETC.—The statute does not say who shall put up these notices. It is presumed that there are some interested parties that will attend to this matter. This notice should state the object of the meeting, and might be in the following form:

Notice.

The electors of special school district, township, county, Ohio, will take notice that on the day of, 190., at o'clock .. M., at a mass-meeting of the electors of said special school district will be held for the purpose of fixing the time for holding the first election of members of the board of education of said district.

.....

Notice of Time of Election.

The electors of special school district,..... township, county, Ohio, will take notice that at a mass-meeting of the electors of said school district on the day of, 190., Monday, the day of, 190., was fixed as the time when the election of members of the board of education of said special school district should be held.

.....
 Chairman.

 Secretary.

The time of election must be at least not less than 25 days after the mass meeting.

§ 48. [Organization of board of education; president; clerk; regular meetings.] (§ 3933.) Boards of education of special school districts shall organize on the first Monday in January after the election of the board, by the election of one of their members president and the election of a clerk, who may or may not be a member of the board, the president to be elected for one year and the clerk to be elected for a term not to exceed two years; and they shall fix the time of holding regular meetings. (97 v. 347.)

See § 13 (§ 3897a), as to organization, committees, etc.

§ 49. [Board of education may provide for conveyance of pupils to school house.] (§ 3934.) Boards of education of special school districts are authorized to provide for the conveyance of the pupils of said districts to the school or schools of the districts, the expense of said conveyance to be paid from the school fund of the special school districts; provided, however, that boards of education of such districts as provide transportation for the pupils thereof shall not be required to transport pupils living less than one-half of a mile from

the school house; transportation of pupils, in any event being optional with the board of education. (98 v. 267.)

§ 50. [Abandonment or continuance of special district, election for.] (§ 3935.) When a petition is signed by not less than one-third of the electors residing within the territory constituting a special school district, whether created under the provisions of a general or special act, praying for the abandonment or continuance of such district, shall be presented to the board of education of said district, or when said board shall, by a majority vote of the full membership of the board, decide to submit the question of abandoning or continuing the special school district, it shall be the duty of the board to fix the time of holding said election at either a special or general election, and the clerk of the board shall notify the deputy state supervisors of elections, as provided in § 3931 (§ 46) of the Revised Statutes of Ohio, of the date of such election and the nature of the same, and said supervisors of elections shall provide for the same.

[Clerk to post notice.] The clerk of the board of education shall also post notices of said election in five public places within the district. If said election be submitted at a special election in a district situated in two or more election precincts, the election shall be held at the precinct nearest the school house in said special district, by the election officers of the precinct, and all the electors of said district shall vote at said precinct.

[District in two counties.] If the district is situated in two or more counties, the deputy state supervisors of the county in which said nearest election precinct is situated shall have charge of the election. If said question is submitted at a regular election, it shall be conducted in the same manner as the election of members of the board of education.

[Ballot.] The ballot shall be in the regular form, but without the circle at the top, and shall have printed thereon "Abandonment of Special School District, Yes;" "Abandonment of Special School District, No;" or "Continuance of Special School District, Yes;" "Continuance of Special School District, No." as the case may be.

[Expense.] The expense of said election shall be paid in the same manner as are other school election expenses, and

returns of said elections shall be made to the board of education of the special school district, and if more votes are cast for abandonment than against it, or against continuance than for it, said boards shall certify the result to the board or boards of education of the township or townships having territory in said special district, and the territory of said special district shall thereby revert to the township school district or districts from which it was originally taken, except as hereinafter provided for in the case of indebtedness of the special district.

[When to remain a special district.] Otherwise said district shall continue to be and remain and be recognized and regarded as a legal special school district as theretofore constituted. The legal title of the property of the special school district shall in the event of abandonment or failure to continue become vested in the board or boards of education of the township or townships in which such property is situated. And the school funds of said special district shall be paid into the treasury of the township district, and if said special district be in two or more townships, it shall be divided between them in proportion to the total tax valuation of property in the several districts, but the abandonment of a special school district shall not be deemed complete until the board of education of said district shall have provided for the payment of any indebtedness that may exist. (97 v. 348.)

Sec. 3936.	Repealed April 25, 1904.
Sec. 3937.	Repealed April 25, 1904.
Sec. 3938.	Repealed April 25, 1904.
Sec. 3939.	Repealed April 25, 1904.
Sec. 3940.	Repealed April 25, 1904.
Sec. 3941.	Repealed April 25, 1904.
Sec. 3941a.	Repealed 89 v. 96.
Sec. 3942.	Repealed April 25, 1904.
Sec. 3943.	Repealed April 25, 1904.
Sec. 3944.	Repealed April 25, 1904.
Sec. 3945.	Repealed April 25, 1904.
Sec. 3946.	Repealed April 25, 1904.
Sec. 3946a.	Repealed 94 v. 64.
Sec. 3947.	Repealed April 25, 1904.
Sec. 3948.	Repealed April 25, 1904.
Sec. 3949.	Repealed 90 v. 76.
Sec. 3950.	Repealed April 25, 1904.

Petition to Abandon, etc.

Procedure to Abandon, etc.

PROCEDURE TO ABANDON, ETC.—The board may, on its motion, when a majority vote of its full membership so declare,

and must, when a petition signed by one-third of the electors residing within the district is filed with them, submit the question of continuance of said special school district to a vote of the electors of said district; and they shall fix a time when the election is to be held, and certify this fact to the county election board. Women are not entitled to vote on this proposition.

Petition to Abandon, Etc.

*To the Board of Education of the Special School District of
Township, County, Ohio.*

The undersigned, comprising not less than one-third of the electors residing within the territory of said special school district, of township, county, Ohio, respectfully petition your honorable body to submit the question of abandonment of said special school district to the qualified electors of said district, and that you fix the time for holding said election, as provided in § 50 (§ 3935 of the R. S.).

CHAPTER 6.

SCHOOL FUNDS.

SECTION.		SECTION.	
§ 51 (3951)	"The state common school fund" and "Ohio state university fund."	§ 63 (3960)	Rate of levy to be certified to county auditor.
§ 52 (3951a)	Ohio and Miami university fund; admission of pupils.	(3961)	Repealed.
§ 52a	Repealed.	(3961a)	Repealed.
(22b-2-3)	Transfer of public funds.	(3962)	Repealed.
§ 53 (3952)	Interest upon proceeds of salt and swamp lands.	§ 64 (3963)	Tax levy and funds of district in two or more counties.
§ 54 (3952-1)	Proceeds of sale of swamp lands to go to common school funds; how funded, and interest distributed.	§ 65 (3964)	Apportionment of school fund by county auditor.
§ 55 (3953)	The "common school fund."	§ 66 (3965)	Distribution of money after apportionment.
§ 56 (3954)	Accounts of common school fund; how kept, etc.	§ 67 (3966)	Apportionment of school fund by county auditor when county line divides original surveyed township.
§ 57 (3955)	Bequests, etc., in trust for common school fund.	§ 68 (3967)	Certificate of apportionment by county auditor.
§ 58 (3956)	Apportionment of school funds by auditor of state.	§ 69 (3968)	Depositories for school funds, boards of education may provide.
§ 59 (3957)	To what county common school fund paid when county line divides original surveyed township.	§ 70 (3969)	When a board of education fails to provide proper school facilities the county commissioners shall act.
§ 60 (3958)	Boards of education to make local tax levy.	§ 71 (3970)	County auditor to collect fines, etc., and inspect section sixteen accounts.
§ 61 (3958a)	Levy of taxes for special school districts.	§ 72 (3970-1)	Sinking fund, board of commissioners of.
(3958-1)	Repealed.	§ 73 (3970-2)	How sinking fund invested.
(3958-2)	Repealed.	§ 74 (3970-3)	Refunding, renewing or extending bonded debt.
§ 62 (3959)	Maximum tax levy for school purposes; when greater tax may be levied.	§ 75 (3970-4)	Reports of sinking fund; how orders are drawn.

§ 51. [The state common school fund; tax levy for.] (§ 3951.) For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied annually a tax of one mill on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes, and the proceeds of which shall constitute "the state common school fund," and for the payment of interest on the irreducible or trust fund debt for school purposes, ten one-hundredths of one mill, said fund to be styled "the sinking fund." The rate for such levy shall be designated by the general assembly at least once in two years; and if the general assembly shall fail to designate the rate for any year, the same shall be one mill for the state common school fund and ten one-hundredths of one mill for the sinking fund. (98 v. 256.)

CONSTITUTIONAL PROVISIONS.

ARTICLE VI.

[Funds for educational and religious purposes.] Sec. 1. "The principal of all funds, arising from the sale or other disposition of lands, or other property, granted or intrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom shall be faithfully applied to the specific objects of the original grant, or appropriations."

[School funds.] Sec. 2. "The general assembly shall make such provisions, by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state."

Religious instruction, or the reading of the Bible in the public schools, is not required by the constitution. The board of education have the sole management of the schools, and the courts can not direct what instruction shall be given or what books read. (*The Board of Education of Cincinnati v. Minor et al.*, 23 O. S., 211.)

A requirement of a board of education that the Bible be read in the schools as an opening exercise can not be interfered with by the courts, and is not in violation of any constitutional rights. (*John B. Nessel et al. v. R. W. Hum et al.*, 1 N. P., 140.)

It is an unlawful diversion of the school funds of the state of Ohio for a board of education to authorize the teaching of religion as a regular branch of study. (Attorney-General.)

See § 92, reading Bible in schools.

See § 81, as to taxation.

§ 52. [**Repeals.**] Sec. 10. That sections 3951*a* and 3951*b* of the Revised Statutes of Ohio and sections 3, 4, 5 and 6 of an act entitled, "An act to establish normal schools at Ohio University at Athens, and at Miami University at Oxford, and to provide for the appointment of a commission to investigate and report upon the need and advisability of the future establishment by the state of one or more additional normal schools, and to consider in what manner and to what extent existing educational institutions other than those now supported by the state can be made more active in the better training of persons for service in the public schools," passed March 12, 1902, be and the same are hereby repealed. (98 v. 312.)

[**Transfer of public funds.**] Sec. 22*b*-2. That the county commissioners of any county, infirmary directors of any county or municipality, the township trustees of any township, the board of education of any school district, the council or other board or body having the legislative power of any municipality and the trustees of any hamlet, shall have power to transfer the public funds under their respective supervision, from one fund to another, in the manner hereinafter provided, which shall be an additional procedure to all other now provided by law. (95 v. 371.)

[**Petition to be filed in common pleas court.**] Sec. 22*b*-3. Whenever a majority of officers or of the members of any board aforesaid named desire to transfer any fund to any other fund, or to a new fund to be created, under their respective supervision, and a resolution of such officers or board shall have been duly passed declaring the necessity therefor, such officers or board shall file a petition in the court of common pleas of the county in which such funds are held, in which shall be set forth the name and amount of the fund or funds to which it is desired to be transferred, a copy of said resolution and a full statement of the proceedings per-

taining to its passage, and the reason or necessity for such transfer, upon such petition being filed,

[**Notice of filing, etc.**] The petitioner shall cause notice of the filing of said petition, the objects and prayer thereof, and of the time when said petition will be for hearing, to be given by one publication in two newspapers, of opposite politics, having a general circulation in the territory to be effected by such transfer of funds, preference to be given to such newspapers as are published within such territory, but if there shall be no such newspapers published or having a general circulation within such territory, then such notice shall be given by posting the same in ten of the most conspicuous places within such territory for such period of four weeks:

[**Hearing and decree of court.**] Said petition may be heard at the time stated in said notice, or as soon thereafter as it shall be convenient for the court to hear the same, but said cause shall be heard, upon request of the petitioners, in preference to all other cases on the docket. Any person or persons objecting to the prayer of such petition, shall file their objections in said cause on or before such time fixed in said notice for hearing, and they shall be entitled to be heard. If, upon the hearing, the court shall find that the notice has been given, as herein required, that the petition states sufficient facts, and that there are good reasons, or that a necessity exists for such transfer, and no injury will result by granting the prayer of such petition, it shall grant the prayer of the petition and order the petitioners to make such transfer, and a copy of the findings, orders and judgments of the court shall be certified by the clerk and spread upon the records of the officers or board who are petitioners, and upon the same being done such petitioners may make the transfer of funds as directed therein.

[**Costs.**] And such petitioners shall pay all of the costs of such proceedings, except when objections are filed, the court may order such persons objecting to pay all or such portion thereof as may be just and equitable.

[**Appeal.**] Said petitioners or any person or any number of persons filing objections to such petition, may appeal said cause to the circuit court of said county, and the proceedings for such appeal shall be the same as provided for appeals from the common pleas to the circuit court in other cases, and when

said cause shall be appealed, the circuit court shall have the same power and make the same orders, and all proceedings therein shall be had, as herein provided for in the court of common pleas, except upon such appeal, the question of costs shall be within the discretion of said court; and such cause may be reviewed on error in the supreme court. (95 v. 371.)

Comments.

Procedure.

Resolution.

Procedure in Court of Com-
mon Pleas.

Form of Petition.

Notice of Filing.

Form of Notice.

Hearing of Petition.

Form of Entry.

PROCEDURE.—The first requisite in a transfer of funds as provided for by law is the passage of a resolution by the board of education, indicating that it is expedient and necessary so to do in the opinion of the board. In order for such a resolution to be legally passed by the board of education a majority of the members of such board must be in favor thereof, and not a mere majority of those present or voting on such resolution. It would be advisable to have a called aye and nay vote.

The resolution might be in the following form:

Form of Resolution.

Whereas, by reason of (here state cause) the fund of this board of education has become depleted, and it is necessary (here state reason) that there be added to said fund the sum of \$.....

Whereas, there is now the sum of in the fund of this board of education which is not appropriated for other purposes, therefore,

Be it resolved, by this board of education that the sum of \$...... be transferred from the fund to the fund, and that it is necessary to make such transfer for the following reasons:

Resolved, further, that the president of this board be authorized and directed to file a petition in the court of common pleas of this county as directed by law, authorizing the transfer of said funds, and that he be authorized to do all things necessary thereto, procuring legal counsel if necessary.

PROCEDURE IN COURT OF COMMON PLEAS.—The above resolution having been passed by a majority vote of the members, the next thing in order is to file a petition in the court of common pleas to secure the consent of the court to such an order. The following might serve as a form of petition:

Form of Petition.

In the Matter of the Application for Transfer of Funds by the Board of Education of School District.

The undersigned respectfully represents that at a regular meeting of the board of education of school district on the day of a resolution, a certified copy of which is hereby attached and marked "Exhibit A," was passed by a majority vote of all the members of said board, said resolution declaring that it is necessary to transfer the sum of \$...... from the fund to the fund.

That it is necessary to make transfer for the following reasons:

.....

Wherefore the petitioner asks that such proceedings may be taken in the premises as is authorized by law.

.....

STATE OF OHIO, }
..... COUNTY. } ss:

A. B., being first duly sworn, says that he is the president of the board of education of school district, and that the allegations in the above application are true as he verily believes.

.....

Sworn to and subscribed before me and in my presence this day of

NOTICE OF FILING.—The petition having been filed, it is necessary that a notice of such filing containing the objects and prayer of the petition, and the time when the same will be for hearing shall be given by publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer of funds. If there is no such paper a notice can be given by posting the same in ten of the most conspicuous places within such territory for the period of four weeks.

This notice may be in the following form:

Form of Notice.

To Whom it May Concern:

Notice is hereby given that on the day of there was filed by the board of education of school district in the court of common pleas of county, for the purpose of transferring the sum of \$...... from the fund to the fund, and praying that the court might order the said board of education to make such transfer; that said petition will be for hearing on the day of, or as soon thereafter as it shall be convenient for the court to hear the same.

HEARING OF PETITION.—If any person so chooses, they may file objections to the granting of such petition, and the court would proceed to hear it in the regular way, and if the court finds that the notice has been given as required, and that the

petition states sufficient facts, and that there are good reasons for such transfer, and no injury will result by the granting the prayer of the petition, the court will order the petitioning board to make such transfer.

The following might serve as an entry:

Form of Entry.

In the Matter of the Application for Transfer of Funds by the Board of Education of the School District.

This day this matter came on to be heard upon the petition and testimony and was submitted to the court.

Whereupon the court finds that notice of the filing of said petition, the objects and prayer thereof and the time when the same will be for hearing has been given as required by law; that the petition states sufficient facts, and that there are good reasons, and that a necessity exists for such transfer, and no injury will result by granting the prayer of said petition.

Wherefore it is ordered that said board of education of school district is authorized to transfer the sum of \$..... from fund to fund.

And it is further ordered that a copy of these findings, orders and judgments shall be certified by the clerk to the said board of education and that said board shall spread the same upon its records; that the costs herein, taxed at \$....., be paid by said board of education.

§ 53. [Interest upon proceeds of salt and swamp lands.] (§ 3952.) The state shall pay interest annually, at the rate of six per cent. per annum, upon all money which has been paid into the state treasury on account of sales of lands commonly called "salt lands," and upon all money heretofore paid, or which may hereafter be paid into the state treasury on account of sales of swamp lands granted to the state of Ohio by act of congress; the money received from such sales shall constitute an irreducible debt of the state; and the interest shall be apportioned annually on the same basis as the state common school fund is apportioned, and distributed to the several counties as provided in section *thirty-nine hundred and fifty-six*. (§ 58.) (70 v. 195, § 132; 49 v. 40, § 1; S. & C., 1338.)

The irreducible debt of Ohio now amounts to about \$1,000,000, and there has been added by bequests, etc., about \$500,000, so that now there is an assured annual fund of \$90,000 from this source to be applied to school purposes.

§ 54. [Proceeds of sale of swamp lands to go to common school funds; how funded, and interest distributed.] (§ 3952-1.) The net proceeds that may hereafter be paid into

the state treasury, from the sales of swamp lands granted to the state of Ohio by act of congress passed September 28, 1850, be and the same is hereby appropriated to the general fund for the support of common schools; and the state of Ohio is hereby pledged to pay the interest, annually, on any and all sums of money which may be paid into the state treasury, from the sales of said lands, from the receipt of such money into the treasury aforesaid; and the interest arising as aforesaid shall be funded, annually, until the first day of January, in the year eighteen hundred and fifty-five; after which time the interest shall be annually distributed to the several counties in this state, in proportion to the number of male inhabitants above the age of twenty-one, as the law shall be ascertained for the apportionment of representatives; and the proportion of interest due to each and every such county shall be distributed for the support of common schools, in the respective counties, in the manner prescribed in the "act to provide for the support and better regulation of common schools." (1883, March 5; 80 v. 39; R. S. 1880; 49 v. 40; S. & C., 1338.)

§ 55. [The "common school fund."] § 3953.) The money which has been and may hereafter be paid into the state treasury on account of sales of lands granted by congress for the support of public schools in any original surveyed township, or other district of country, shall constitute the "common school fund," of which the auditor of state shall be superintendent, and the income of which shall be applied exclusively to the support of common schools, in the manner designated in this chapter. (70 v. 195; §§ 127, 128; S. & C., 1335.)

See § 53 (§ 3952, R. S.).

§ 56. [Accounts of common school fund; how kept, etc.] (§ 3954.) The common school fund shall constitute an irreducible debt of the state, on which the state shall pay interest annually, at the rate of six per cent. per annum, to be computed for the calendar year, and the first computation on any payment of principal hereafter made to be from the time of payment to and including the thirty-first day of December next succeeding; and the auditor of state shall keep an account of

the fund, and of the interest which accrues thereon, in a book or books to be provided for the purpose, with each original surveyed township and other district of country to which any part of the fund belongs, crediting each with its share of the fund, and showing the amount of interest thereon which accrues and the amount which is disbursed annually to each. (70 v. 195, §§ 128, 129; S. & C., 1335.)

See § 53, as to amount of irreducible debt.

§ 57. [Bequests, etc., in trust for common school fund.] (§ 3955.) When any grant or devise of land, or any donation or bequest of money or other personal property, is made to the state of Ohio, or to any person, or otherwise, in trust for the common school fund, the same shall become vested in said fund; and when the money arising therefrom is paid into the state treasury, proper accounts thereof shall be kept by the auditor of state, and the interest accruing therefrom shall be applied according to the intent of the grantor, donor, or devisor. (70 v. 195; § 131; S. & C., 1336.)

§ 58. [Apportionment of school funds by auditor of state.] (§ 3956.) The auditor of state shall apportion the state common school fund to the several counties of the state semi-annually, upon the basis of the enumeration of youth therein, as shown by the latest abstract of enumeration transmitted to him by the state commissioner of common schools.

[February settlement.] Before making his February settlement with county treasurers he shall apportion such amount thereof as he shall estimate to have been collected up to that time, and, in the settlement sheet which he transmits to the auditor of each county, shall certify the amount payable to the treasurer of his county; before making his final settlement with county treasurers each year, he shall apportion the remainder of the whole fund collected, as nearly as the same can be ascertained, and in the August settlement sheet which he transmits to the auditor of each county shall certify the amount payable to the treasurer of his county; in each February settlement sheet he shall also enter the amount of money payable to the county treasurer on the apportionment of interest specified in section *thirty-nine hundred and fifty-two*

(§ 53); he shall also enter in each February settlement sheet the amount of money payable to the county treasurer on account of interest for the preceding year on the common school fund, and designate the source or sources from which the interest accrued; he shall transmit with each February settlement sheet a certified statement, showing the amount of interest derived from the common school fund payable to each original surveyed township or other district of country within the county.

[**Treasurer's settlement.**] And the treasurer of each county shall, at each semi-annual settlement with the auditor of state, retain in the county treasury, from the state taxes collected by him, the amount of the funds herein mentioned shown by the settlement sheet of the auditor of state to be payable to him at that time; but if such amount for any county exceeds the amount of state taxes collected therein, the auditor of state shall draw an order on the treasurer of state, in favor of the treasurer of such county, for the balance of school funds due his county, and transmit the same to such county treasurer, and the treasurer of state shall pay such order upon its presentation to him. (70 v. 195, §§ 120, 130; S. & C., 1359.)

§ 59. [**To what county common school fund paid when county line divides original surveyed township.**] (§ 3957.) If parts of an original surveyed township or fractional township are situate in two or more counties, the amount of interest on common school fund due to such township shall be paid in the manner provided in the last section, to the treasurer of the county wherein the greatest relative portion of such township is situate; but if it be uncertain in which county such portion is situate, the amount of interest due to such township shall be paid to the treasurer of the oldest county in which any part of the township is situate. (70 v. 195, § 130.)

§ 60. [**Board of education to fix rate of taxation necessary to be levied after state funds are exhausted.**] (§ 3958.) Each board of education shall, annually, at a regular or special meeting held between the third Monday in April and the first Monday in June, fix the rate of taxation necessary to be levied for all school purposes, after the state funds are exhausted.

[**Levy to be divided into four funds.**] Said levy shall be divided by the board of education into four funds, namely, first, tuition fund; second, building fund; third, contingent fund; fourth, bonds, interest and sinking fund, and a separate levy shall be made for each fund. (98 v. 248.)

Sec. 3958a. Repealed April 25, 1904.

Sec. 3958-1. Repealed April 25, 1904.

Sec. 3958-2. Repealed April 25, 1904.

Resolution, etc.

Resolved, by the board of education of school district, the rate of taxation for all school purposes after the state funds are exhausted, be, said levy be divided as follows:

Tuition fund	\$.....
Building fund	\$.....
Contingent fund	\$.....
Interest and sinking fund.....	\$.....

and that the same be certified to the auditor on or before the first Monday in June.

COMMENTS.—See decision in *Saunders v. State of Ohio*, 2 C. C., 75, under § 3967 (§ 68).

“A notice, by a clerk of a board of education, of a tax voted by the board, to build a school house, delivered to the auditor on the 11th day of June, is sufficient authority to the auditor for carrying the tax into his duplicate.” (II *Western Law Monthly*, 589.)

It is a general rule that statutes, so far as they limit a time for the performance of an act by a public officer, for the public benefit, are merely directory, when the *time* is not the *essence* of the thing to be done, unless there are negative words, and the act is valid if done afterwards.

Tuition from non-resident pupils is to be paid to the board of education, and disbursed like other contingent funds. Neither the teacher nor the directors have any authority to retain or to pay out such funds. Neither is the clerk the proper custodian of such funds. See clerk.

The term “Contingent Fund” is used to designate the local levy, because the amount of it is *contingent* on the difference between the wants of the district and the amount of state funds received. It includes both the amount levied for the payment of teachers, and that for building, repairs and other expenses. The language of this section and that of § 68 (§ 3967) seems to imply that the state funds are to be used only for the payment of teachers.

§ 61. [**Levy of taxes for special school districts.**] (3958a.) Provided that in all cases of special school districts, now ex-

isting or that may hereafter be created, lying wholly within one civil township, and in cases where the special school district lies in and is part of two or more civil townships of the same or different counties, and in all cases where there are two or more special school districts lying wholly or partly within one civil township, there may be levied a tax for school purposes, not exceeding six mills, on the duplicate of all the taxable property in such township and lying outside of all city and village school districts that may be therein, which levy shall be made when a petition in writing signed by two-thirds of the electors of said civil township is filed with the clerk of the board of education of such township by a joint board consisting of the board of education of that township and of the board of education of the special school district, or of the board of education of that township and of the boards of education of the special school districts as the case may be, acting in joint session, at a meeting or meetings to be called for that purpose, by the president of the board of education of the township between the third Monday in April and the first Monday in June of each year; or, if said boards fail to meet as aforesaid, or fail to agree and make a levy as herein provided, then such levy shall be made by the county commissioners on the application of either board.

[**How funds divided.**] The funds raised from such levy shall be divided between the board of education of the township and of the special school district, or between the board of education of the township and the boards of education of the special school districts, as the case may be, in proportion to the number of children of that township of school age living in the township outside of the special school district or districts, as the case may be. In addition to this general levy made by the joint boards, either board may levy an additional tax not to exceed six mills, on the duplicate of all the taxable property within its own territory; the funds arising from this additional levy to be used only for the schools within the territory where such additional levy is made; and provided further that in event the levy so made by said boards is inequitable to either, or insufficient to provide funds for and maintain the schools in either the township or special school districts, then either board may appeal to the county commissioners of the county

in which the township is situated to adjust and make said levy; and said commissioners may then make such levy, not exceeding six mills, for the purposes named in this section, as they may deem just and equitable and sufficient to provide for and maintain the schools in said township and school districts; and provided further, that in the event either of said boards of education meet to fix a levy for school purposes, as provided in section 3958 (§ 60), before the levy is fixed by the joint board as herein provided, and the levy so made by said board of education, acting independently, is more than six mills on the dollar of valuation of taxable property in its school district, then the excess of the levy so made over and above the six mills shall be subject to division in proportion and manner as provided in this section, between the township and special districts. (98 v. 248.)

§ 62. [**Maximum levy.**] (§ 3959.) The local tax levy for all school purposes shall not exceed twelve mills on the dollar of valuation of taxable property in any school district, and in city school districts shall not be less than six mills, but said levy shall not include any special levy for a specified purpose, provided for by a vote of the people.

[**Greater tax may be levied if authorized by vote of people.**] A greater or less tax than is authorized herein may be levied for any or all school purposes, and any board of education is authorized to make an additional annual levy of not more than five mills for any number of consecutive years not exceeding five, if the proposition to make such levy or levies shall have been submitted, by the board of education, to a vote of the electors of the school district, under a resolution prescribing the time, place and nature of the proposition to be submitted, and approved by a majority of those voting on the proposition.

[**Notice of election.**] Notice of such election must be given by publication of the resolution for three consecutive weeks prior thereto in some newspaper published and of general circulation in the district, or by posting copies thereof in five of the most conspicuous places in the district for a like period, if no such paper is published therein. (98 v. 127.)

VOTE ON HIGHER RATE, ETC.—It is not likely to be very often that a higher rate is needed than the law provides, but

if it is needed the matter is to be submitted to a vote of the people of the district. The board shall first pass a resolution to submit the matter. This resolution must fix the time, place and nature of the proposition to be submitted. In order for it to pass it must be approved by a majority of those voting on the proposition. Unless the statute so provides, no election other than for public officers is held under the general election law. The election, then, in this case, would be held at the place indicated under direction of the school board. The law must be strictly complied with. Probably the method followed in election of a school director could be pursued, and forms there given could be used. See § 36 (§ 3921a).

See also forms for issue of bonds, § 100 (§ 3992).

After the vote is taken and the result allows the highest rate to be made, a certificate of the rate then fixed should be filed with the auditor.

§ 63. [Amount of levy to be certified to county auditor.] (§ 3960.) The amount of the levy fixed by the boards of education under sections thirty-nine hundred and fifty-eight (§ 3958) (§ 60), thirty-nine hundred and fifty-eight *a* (§ 3958a) (§ 61), and thirty-nine hundred and fifty-nine (§ 3959) (§ 62), shall be certified to the county auditor in writing, on or before the first Monday in June of each year by the boards of education, and on or before the first Monday in August of each year by the county commissioners when the levy is made by them, who shall assess the entire amount upon all the taxable property of the district, and enter upon the tax duplicate of the county, and the county treasurer shall collect the same at the time and in the same manner as state and county taxes are collected, and pay it to the treasurer of the district upon the warrant of the county auditor; and unless the county treasurer is paid a fixed salary he shall receive one per centum on all money so collected, and no more. (98 v. 249, 97 v. 349.)

Sec. 3961. Repealed April 25, 1904.

Sec. 3961a. Repealed April 25, 1904.

Sec. 3962. Repealed April 25, 1904.

Certificate of Annual School Levy.

FORM PRESCRIBED BY BUREAU OF INSPECTION AND SUPERVISION OF
PUBLIC OFFICERS.

To the Auditor of County:

It is hereby certified by the board of education of school district, county, that the entire amount necessary to be levied

upon the property of said school district for school purposes, during the next school year, as directed by section 3958 R. S., is as follows:

For tuition fund	mills.	\$.....
For building fund	mills.	\$.....
For contingent fund	mills.	\$.....
For bonds, interest and sinking fund	mills.	\$.....
For	mills.	\$.....

By order of the Board of Education.

....., Clerk,
....., Ohio,, 19..

Boards of education required to certify levy for building and other purposes, to the county auditor, in addition to the levy provided in §§ 62 (3959), 63 (3960); see § 100 (§ 3992).

Where a board of education certifies an estimate of a school tax to the county auditor, who places the same on the tax list in a reduced form, a citizen and taxpayer of the school district who, five months thereafter, seeks by *mandamus* on his own relation, to compel the auditor to place the original estimate on the tax list, must satisfy the court that the board of education did not consent to the reduction. (The State v. Capper 39 O. S., 455.)

See decision in 2 C. C., 475, under § 68 (§ 3967).

As to apportionment of funds and distribution of moneys to proper funds, see § 68 (§ 3967, R. S.).

County commissioners to act as board of education in case the latter neglects to perform its duty, see § 70 (§ 3969).

See note in regard to filing certificate under § 60 (§ 3958).

§ 64. [Tax levy and funds of district in two or more counties.] (§ 3963.) When a school district is composed of territory in two or more counties the rate of taxation shall be ascertained by the board of education of such district and shall be certified to the auditors of the several counties and such county auditors shall place the same on the tax duplicate and the same shall be collected as provided in section thirty-nine hundred and sixty (§ 63) of the Revised Statutes of Ohio. The funds belonging to a district composed of territory in more than one county shall be paid by the treasurers of the other counties to the treasurer of the county having the greatest tax valuation in said district; the auditor of the other counties shall make settlement on account of such funds with the auditor of the county having said greatest tax valuation; and the treasurer of the district shall make the settlement required by section thirty-nine hundred and sixty-six (§ 67) of the Revised Statutes of Ohio, with such auditor. (97 v. 350.)

§ 65. [Apportionment of school fund by county auditor.] (§ 3964.) Each county auditor shall, immediately after each annual settlement with the county treasurer, apportion the school funds for his county; the state common school fund shall be apportioned in proportion to the enumeration of youth in each of the several school districts within the county, but if an enumeration of the youth of any district has not been taken and returned for any year, such district shall not be entitled to receive any portion of said fund; the local school tax collected from the several districts shall be paid to the districts from which it was collected; money received from the state on account of interest on the common school fund shall be apportioned to the school districts and parts of school districts within the territory designated by the auditor of state as entitled thereto, in proportion to the enumeration of youth therein, and all other money in the county treasury for the support of the common schools, and not otherwise appropriated by law, shall be apportioned annually in the same manner as the state common school fund. (97 v. 350.)

The auditor's duty to apportion the state common school fund among the districts, according to the number of youth, is not excused by his inability to apportion other funds. His failure to apportion such funds does not authorize the township school board to treat it as a contingent fund and apportion it at discretion. Hence, the indebtedness of the township board for building school houses in an amount exceeding all the funds is no defense to a salary order of a teacher in a sub-district, entitled to one-fourth of the state common school fund, its contingent fund being exhausted. (State v. Zeeb, 9 C. C., 13.)

§ 66. [Distribution of money after apportionment.] (§ 3965.) The auditor shall immediately after such apportionment is made, enter the same in a book to be kept for that purpose, and furnish a certified copy of the apportionment to each school treasurer and clerk of his county; and he shall give to each of such treasurers an order on the county treasurer for the amount of money payable to him, and take his receipt therefor. (70 v. 195, § 120.)

Boards of education. can leave school moneys in county treasury and draw the same from time to time in amounts of not less than one hundred dollars; see § 1122, R. S.

County auditors shall in no case permit treasurer to have in his hands school funds amounting to more than one-half the amount of his bond; see § 4048 (§ 268).

§ 67. [Apportionment of common school fund by county auditor when county line divides original surveyed township.] (§ 3966.) When an original surveyed township or fractional township is situate in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county, to whose treasurer the interest on the proceeds of such sale is paid, shall apportion such interest to the counties in which such township is situate, in proportion to the youth of the township enumerated in each; such auditor shall certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situate in his county, and transmit to the treasurer of each of such counties an order on the treasurer of his own county for such amount; and the auditor of each county shall apportion the amount of such interest belonging to the part of the township in his county, to the district or parts of districts entitled thereto, in proportion to the enumeration of youth therein, and certify and pay the same to the proper school officers, as provided in the preceding section. (70 v. 195, §§ 121, 122; 72 v. 63, § 36.)

§ 68. [Certificate of apportionment by county auditor.] (§ 3967.) The certificate of apportionment furnished by the county auditor to the treasurer and clerk of each school district shall exhibit the amount of money received by each district from the state, the amount received from any special tax levy made for a particular purpose as well as the amount received from local taxation of a general nature; the amount received from the state common school fund and the common school fund shall be designated the "tuition fund" and shall be appropriated only for the payment of superintendents and teachers; the funds received from special levies shall be designated in accordance with the purpose for which the special levy was made and shall be paid out only for such purpose, but when a balance remains on [in] such fund after all expenses incident to the purpose for which it was raised shall have been paid, such balance shall become a part of the contingent

APPORTIONMENT OF FUNDS.—The amount of funds apportioned to any sub-district for school purposs in any one year can not be increased or diminished by reason of any deficit or surplus in the funds previously apportioned to that sub-district or to any other sub-district. (Saunders, Treas., v. State of Ohio, 2 C. C., 475.)

As to what constitutes the contingent fund, see § 60 (§ 3958).

Inasmuch as the larger sub-districts receive more of the state funds than the smaller sub-districts, the latter ought to receive proportionately more of the township tuition fund than the former. If, however, the larger sub-districts contain two or more schools, or actually require more tuition money than the smaller to sustain their schools an equal length of time, they are entitled to more.

In the larger sub-districts township boards of education may, in some instances, be obliged to pay higher wages than the smaller. The intention of the law is to require boards of education to provide the necessary funds, all the circumstances being duly considered, for continuing the schools of the several sub-districts an equal length of time.

The adding together of the state and contingent funds, and then dividing the sum equally among the several sub-districts, as is so frequently done by township boards, is not a compliance with either the letter or the spirit of the law. An *equal* division, except in rare instances, can not be an equitable division.

§ 69. [Depositories for school funds, boards of education may provide.] (§ 3968.) The board of education of any school district shall have authority to provide by resolution for the deposit of any or all moneys coming into the hands of the treasurer of the board.

[Amount that may be deposited in any one bank.] Provided, however, that no bank shall receive a larger deposit than the amount of its paid-in capital stock, and in no event to exceed three hundred thousand dollars (\$300,000.00). In school districts containing two or more banks such deposit shall be made in the bank or banks, situated in that district, that shall offer at competitive bidding the highest rate of interest which in no case shall be less than two per cent. for the full time the funds or any part thereof are on deposit, and such bank or banks shall give a good and sufficient bond of some approved guaranty company in a sum at least equal to the amount deposited, and it shall be the duty of the treas-

urer of the school district to see that a greater sum than that contained in the bond is not deposited in such bank or banks, and said treasurer and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond; the board shall determine in such resolution the method by which such bids shall be received, the authority which shall receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given, but all such proceedings in connection with such competitive bidding and deposit of such moneys shall be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection; if in the opinion of a board of education there has been any collusion between the bidders, said board may reject any or all bids and may provide for the deposit of funds in a bank or banks without the district as hereinafter provided for in districts not having two or more banks located therein.

[**School districts containing but one bank.**] In all school districts containing less than two banks the board of education may, after the adoption of a resolution providing for the deposit of its funds, enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, which shall in no case be less than two per cent. for the full time the funds or any part thereof are on deposit, and said bank or banks shall give good and sufficient bond of some approved guaranty company in a sum at least equal to the amount deposited, and it shall be the duty of the treasurer of the school district to see that a greater sum than that contained in the bond is not deposited in such bank or banks, and said treasurer and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond; said resolution and contract shall set forth fully all details necessary to carry into effect the authority herein given and all proceedings connected with the adoption of said resolution and the making of said contract shall be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection. When a depository is provided as authorized herein and the funds are deposited therein, the treasurer of the school district and his bondsmen shall be relieved of any liability occasioned by the failure of the bank or banks

of deposit or by the failure of the guaranty company acting as surety for such bank or banks or by the failure of either of them, except as herein provided in cases of excessive deposits. (97 v. 351.)

Making Deposits, etc.	Form of Resolution.
When there are Two Banks.	Note.
Where there are not Two Banks in the School District.	Form of Resolution. Note.
Duty of Treasurer.	Form of Resolution.

MAKING DEPOSITS, ETC.—The above section makes it discretionary with the board of education whether or not funds shall be deposited in certain banks. However, if the board of education once decides to make the deposits, then it becomes mandatory on them to follow the provisions of the statute. It will be observed that there are two limitations placed upon the amount that may be put in any one bank. First, it must not exceed the amount of its paid-in capital stock, and the words "capital stock" here do not necessarily mean that the bank must be incorporated, but that it must have so much paid-up capital, and the amount to be deposited must not exceed that sum, and the second limitation is that it shall not exceed \$300,000.

WHEN THERE ARE TWO BANKS.—Where there are two banks, located in the school district, the law favors them in this, that if there is no collusion between these two banks, the money must be deposited in that one which is the highest bidder. If, however, there should be any collusion, then the same course is taken as if there were no two banks within the school district. The statute limits or gives a minimum rate for which a bid may be accepted, to wit, two per cent. Further, the board shall determine by its resolution the method by which bids should be received and all the details of carrying out the proceedings connected therewith.

WHERE THERE ARE NOT TWO BANKS IN THE SCHOOL DISTRICT.—If there are less than two banks in a school district, or if there has been collusion between the two banks located in the district, then the board is authorized to enter into a contract with one or more banks that are conveniently located and which offer the highest rate of interest. In the above case a bond must be given and approved by a guaranty company in a sum at least equal to the amount deposited.

DUTY OF TREASURER.—It is the duty of the treasurer to see that at no time is the amount on deposit in any bank in ex-

cess of the bond of such bank, and if the treasurer so exercises his duty, he and his bondsmen will not be liable for a failure of the bank. The following might serve as a form of resolution. It seems that unless some member of the board demands the ayes and nays that there need not be that kind of a vote upon such a resolution, and that a majority of a quorum would be sufficient to carry the proposition.

Form of Resolution.

It is hereby resolved by the board of education of school district, township, county, Ohio, that the school funds in the control of the treasurer be deposited in certain banks, as provided by § 3968 of the Revised Statutes.

Resolved, further, that there being two banks situated within this district, that the said deposit shall be made in that bank that shall offer the highest rate of interest, which said rate shall in no case be less than two per cent. of the full amount that at any time may be on deposit; and it is further ordered that no deposit shall be made in any bank until a good and sufficient bond, to be hereafter approved by this board of education, be given in a sum at least equal to the deposit that may be made in such bank, and it is further ordered that the clerk of this board shall give notice to the banks situated in this school district that on the day of, at the office of this board the privilege of such deposit will be sold to the bank bidding the highest rate of interest therefor. That the bank bidding therefor may bid openly at such time, or may send sealed bids to the clerk of this board, which bids will be opened at that time, and if there is no collusion between any of the bidders, the board will accept the bank making the highest bid. Otherwise, the board reserves the right to reject any and all of such bids.

NOTE.—This form of resolution can be very easily changed to the case where there are not two banks within the school district.

After the bids have been opened and there being no collusion in the case of two banks, situated in the school district, the board should, by resolution spread on its minutes, accept the bid of the person or bank making the highest bid, and the board in such cases would have no right to make an order giving a part of the money to one bank and giving the remainder to another bank which had bid a lower sum. (State ex rel. v. Madison Township, 15 Dec. 721.) And the final resolution might be in the following form:

Form of Resolution.

Resolved, by the board of education of school district, county, that the bid of bank, for the privilege of receiving the deposits of this school board, the same having been per cent., and not less than two per cent. for the full time the funds are on deposit, be and the same is hereby accepted, and it is further ordered that said bank shall give a good and sufficient bond in some approved

guaranty company in the sum (the same being not less than the amount on deposit.

Note.—If the bank should present its bond at the same time, the resolution might proceed as follows:

Form of Resolution.

Resolved, further, that as the said bank has herein filed its bond in the sum of \$....., with the surety company, as surety thereon, the said bond is approved and the same is accepted, and it is ordered that the treasurer of this board of education place the deposits belonging to this board in said bank in a sum at no time exceeding the amount of said bond.

§ 70. [When a board of education fails to provide proper school facilities the county commissioners shall act.] (§ 3969.) If the board of education in any district fail in any year to estimate and certify the levy for a contingent fund as required by this chapter, or if the amount so certified is deemed insufficient for school purposes, or if it fail to provide sufficient school privileges for all the youth of school age in the district or to provide for the continuance of any school in the district for at least seven months in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, or to elect a superintendent or teachers, the commissioners of the county to which such district belongs, upon being advised and satisfied thereof, shall do and perform any or all of said duties and acts, in as full a manner as the board of education is by this title authorized to do and perform the same; and the members of a board who cause such failure shall be each severally liable, in a penalty not to exceed fifty nor less than twenty-five dollars, to be recovered in a civil action in the name of the state upon complaint of any elector of the district, which sum shall be collected by the prosecuting attorney of the county, and when collected shall be paid into the treasury of the county, for the benefit of the school or schools of the district. (97 v. 334.)

WHEN COMMISSIONERS TO ACT.—The object of the above section is to insure the running of the schools, and there is no doubt but that the mere fact that the commissioners may act in certain cases, school boards do not give them an opportunity so to do. Generally the members of the board would much rather attend to the specified acts than allow some one else

to do so, and whatever their differences may be, they are settled among themselves and action is taken.

Several questions have come up under this section. In solving any doubts that have arisen, it has seemed proper to consider that the *purpose* of the section is to provide an absolute remedy against the suspension of a school, and to assure to each pupil in the state reasonably convenient facilities for attending school seven months each year.

If, however, a board has levied up to the full limit allowed by law, and the sum produced is not sufficient to continue the schools of the district for seven months, there seems to be no remedy. But if a levy under this limit fails to sustain the schools for the minimum time prescribed in this section, then an appeal should be made to the county commissioners, whose duty it will be to raise the levy to the highest limit warranted by the law; and they will be justified in acting as soon as they are satisfied that the amount levied by the board of the district will be insufficient to meet the demands of the law.

If in a large city, where teachers have been paid each month, a board of education stands at a tie in its organization, so that it can not act for months together, and the prospect for action does not brighten, the case would seem to be one in which the schools must stop unless the means are provided for continuing them. In such cases the commissioners should interfere.

The law does not seem to intend that the commissioners shall stop a school which has come under their control, when seven months' school has been taught during the year. They should be governed by the customs of the district. In a city they should keep up the schools forty weeks, if that has been the custom.

Nor is it the intention of this act for the commissioners to step in and control a matter of school government where the board has acted in a matter that is within its discretion. Thus, if the board decides to centralize the schools as permitted by law, it would not be within the province of the commissioners to say that the board acted wrongfully, and hire teachers for the schools centralized, nor could the commissioners employ a superintendent of the board of education if it had abolished that office. If the office of superintendent exists, but is not filled by reason of dissensions of the board, the commissioners might elect one, and he would serve for the time elected, and such person would be entitled to pay from the treasury of the board of education. (State v. Bd. of Ed., 3 N. P., 236.)

A recent and very interesting discussion of when the commissioner may act will be found in an opinion by Judge Middleton, of common pleas court of Champaign county, in Board

of Education v. Shaul, reported in 4 N. P. N. S., 433. In this case the board of education of the township proceeded to centralize some of the schools under § 3922 (§ 37). Some of the patrons of the district that was abolished claimed that by such action of the board they were deprived of the school facilities which were guaranteed to them by law, and thereupon brought a suit to restrain the board from carrying out its intention to centralize, etc. The court held that this matter of centralization was a matter that by the statute was given to the exclusive discretion of the board of education; that the board of education in such matters acted in a judicial capacity and not in a ministerial capacity, and that the commissioners could only act when the board of education shall voluntarily willfully fail to perform any of its ministerial duties, the court saying: "The evidence in this case clearly shows that the board of education had suspended the schools in these two districts, and the action of the county commissioners in hiring teachers in these sub-districts, in effect reversed the action of the school board and reinstated the same. If the board of education, having suspended the schools in these sub-districts, had failed to furnish transportation to other schools as provided by law; that is, had failed to perform its ministerial duty, imposed upon it in this respect by the statute, then the commissioners would have had authority to provide for such transportation, but the board of education, having by its order suspended these schools, and having, as the court thinks the testimony shows, made provision for the transportation of these pupils to other districts, the commissioners were not vested by the statute with authority to review and change, or in any manner interfere with the order of the board of education in this respect."

§ 71. [County auditor to collect fines, etc., and inspect section sixteen accounts.] (§ 3970.) The auditor of each county shall collect, or cause to be collected, all fines and other money, for the support of common schools in his county, and pay the same to the county treasurer; he shall inspect all accounts of interest accruing on account of section sixteen or other school lands, whether the same is payable by the state or by the debtors; and he shall take all proper measures to secure to the school district in his county the full amount of school funds to which it is entitled. (70 v. 195, § 120.)

Fines to be Paid into School Fund.

Secs. 1050 and 1051. Penalty against county auditors for failing to report to state auditor.

Secs. 1052 and 4215. Relating to dog tax.

Sec. 1279. Relating to the disposition of the proceeds of the sale of timber growing on state or school lands, unlawfully cut down.

Secs. 1280 and 1281. Providing for the disposition of the proceeds of the sale of unclaimed property, stolen, embezzled or obtained under false pretenses.

Sec. 1375. Penalty against township trustees and treasurers who refuse to serve.

Sec. 1504. Penalty against township clerk for failure to make detailed statement.

Sec. 1524. Penalty against assessors for neglecting or refusing to make out and return statistics.

Sec. 1525. Penalty against any person, company or corporation refusing to make out and deliver a statement of facts for taxation.

Sec. 3225. Relating to the proceeds of the sale of unclaimed goods by express companies, common carriers, etc.

Sec. 3479. Penalty for avoiding toll on turnpikes or plank road.

Sec. 3969 (§ 70). Penalty against member of board of education who fails to perform certain duties.

Sec. 4027. Penalty against parents and guardians for detaining children from school contrary to law.

Sec. 4038 (§ 252). Penalty against the clerk of a local board for failure to take the school enumeration.

Sec. 4045 (§ 265). Penalty against treasurers of school districts for failure to make annual settlement.

Sec. 4061 (§ 281). Penalty against county auditors and clerks of boards of education for failing to make certain reports.

Sec. 4063 (§ 283). Penalty against county auditors for failure to make enumeration return.

Secs. 4088 (§ 309), and 4089 (§ 310). Penalty against institute committee for failure to make required report.

Secs. 4201 and 4204. Penalty for allowing certain animals to run at large.

Sec. 4218. Penalty against fishing unlawfully.

Sec. 4382. Penalty against owners or keepers of whariboats.

Sec. 4398. Relating to peddlers' license.

Secs. 4401 and 4402. Penalties against peddlers who do not obtain a license.

Sec. 4487. Penalty against auditors, engineers, commissioners and probate judges, who fail to perform certain duties relating to county ditches, sinkholes, etc.

Sec. 6396. Penalty against assessors, physicians, midwives, clergymen, sextons and probate judges, who fail to furnish statistics of births and deaths.

Sec. 6986-10. Unlawful employment of minors.

§ 72. [Sinking fund; board of commissioners of.]
(§ 3970-1.) In any school district having a bonded indebtedness, for the payment of which together with interest, no provision has been made by a special tax levy for that particular purpose, it shall be the duty of the board of education of such district and such board shall annually, on or before the 31st day of August, set aside from its revenue a sum equal to not

less than one-fortieth of said indebtedness together with a sum sufficient to pay the annual interest thereon. The board of education of every district shall provide a sinking fund for the extinguishment of all its bonded indebtedness, which sinking fund shall be managed and controlled by a board of commissioners designated as the "Board of Commissioners of the Sinking Fund of ——" (inserting the name of the district), which shall be composed of five electors thereof, and who shall be appointed by the court of common pleas of the county in which such district is chiefly located, provided, that in city or village districts the board of commissioners of the sinking fund of the city or village may be the board of commissioners of the sinking fund of the school district; the commissioners of the sinking fund shall serve without compensation and shall give such bond as the board of education may require and approve, provided that any surety company authorized to sign such bonds may be accepted by such board of education as surety, and the cost thereof, together with all necessary expenses of the commissioners of the sinking fund shall be paid by said commissioners out of the funds under their control. (97 v. 352; 90 L. L., 97.)

SINKING FUND BOARD.—This board should organize, electing one of their number president, and also select a secretary. It might be well to select the clerk of the school board for this position. A record should be kept of all their proceedings. The law should be strictly followed.

§ 73. [Investment of sinking fund.] (§ 3970-2.) The board of commissioners of the sinking fund shall invest the sinking fund in bonds of the United States, of the state of Ohio, of any municipal corporation, county, township or school district of any state or in bonds of its own issue. All interest received from such investments shall be deposited as other funds of said sinking fund, and reinvested in a like manner. For the extinguishment of any bonded indebtedness included in said sinking fund, the board of commissioners of the sinking fund is authorized to sell or use any of the securities or money of said fund. (98 v. 45.)

§ 74. [Refunding, renewing or extending bonded debt.] (§ 3970-3.) The board of commissioners of the sinking fund

may refund, extend or renew the bonded debt of the school district or any part thereof, existing at the time of the taking effect of this act, by issuing the bonds of said school district for such periods, not exceeding twenty years, in such denomination, payable at such place and at a rate of interest not to exceed the rate previous to such refunding, extension or renewal; provided that the aggregate amount of the refunding, extending or renewing bonds so issued shall not exceed that of the bonds so refunded, extended or renewed. (97 v. 353.)

§ 75. [Report of sinking fund commissioners.] (§ 3970-4.) The board of commissioners of the sinking fund shall make an annual report to the board of education giving a detailed statement of the sinking fund for each year ending with August 31st. Such report shall be filed with the board of education on or before September 30th of each year and other reports may be required by the board of education when the same shall be deemed necessary.

[Appropriation of taxes collected for payment of bonds and interest.] The board of education shall appropriate to the use of said sinking fund any taxes levied for the payment of interest on the bonded indebtedness of said board of education together with the sum provided for in section 1 of this act; and all such sums so appropriated shall be applied to no other purpose than the payment of said bonds and interest thereon and all necessary expenses of said commission.

[Bonds issued by board of education shall first be offered to sinking fund commissioners.] Whenever the board of education shall issue bonds for whatever purpose, the said issue shall first be offered for purchase to said board of commissioners of the sinking fund, who may purchase any or all of said of said issue of bonds at par; the board of commissioners shall, within five days of the time when notice is given, notify the board of education of its action upon said proposed purchase; after which time the board of education shall proceed to issue any portion not purchased by said commission, according to law. (98 v. 45.)

CHAPTER 7.

PROVISIONS APPLYING TO ALL BOARDS.

SECTION.		SECTION.	
§ 76 (3970-10)	School elections; separate ballots and ballot boxes; returns and canvass of vote.	§ 84 (3976)	Process against boards, and how served.
§ 77 (3970-11)	Notice of elections.	§ 85 (3977)	Prosecuting attorney and city solicitor to act as legal adviser of boards of education.
§ 78 (3970-12)	Women may vote and be voted for, for school officers.	§ 86 (3978)	Special meetings, how called.
§ 79 (3971)	Corporate powers of board of education; sales of property exceeding three hundred dollars in value; exchange of real estate with municipal corporation.	§ 87 (3979)	Oath of members and other officers.
§ 80 (3972)	Title to property vested in boards of education; resolutions and orders to remain valid until changed; contracts, bonds and tax levies protected.	(3980)	Repealed.
§ 81 (3973)	School property exempt from taxation.	§ 88 (3981)	Vacancies in board of education, how filled.
§ 82 (3974)	Conveyances and contracts.	§ 89 (3982)	Quorum; majority of all members required in certain cases; roll call; pay roll.
§ 83 (3975)	Boards of education may accept bequests, gifts, or endowments; limitation on same.	§ 90 (3983)	Absence of president or clerk.
		§ 91 (3984)	Record of proceedings and attestation thereof.
		§ 92 (3985)	Boards to make rules; illegal meetings.
		§ 93 (3986)	Board may make and enforce rules for vaccination.
		§ 94 (3986-1)	Display of U. S. flag.
		Sec. 3	Terms of office of existing officers of boards of education (1904).
		§ 94a	To prevent hazing.

§ 76. [Ballots for election of members of board of education.] (§ 3970-10.) Sec. 1. That the names of all the candidates for members of the board of education of any school district in the state of Ohio, however nominated, shall be placed on one independent and separate ballot, without any

designation whatever, except for member of of board of education, and the number of members to be elected.

[Marking of ballot.] A cross shall be placed at the left of the name of each candidate for whom the elector desires to vote. The person having the highest number of votes shall be declared elected a member of the board of education, and the next highest, and so on until the number of members required to be elected shall have been selected from the number having the highest number of votes. (98 v. 116.)

[Arrangement of names of candidates on tickets used in election of members of board of education.] (Sec. 2.) The ballots shall be printed and prepared as follows: The whole number of ballots to be printed for the school district shall be divided by the number of candidates for member of board of education of the school district, and the quotient so obtained shall be the number of ballots in each series of ballots to be printed as follows: The names of candidates shall be arranged in alphabetical order and the first series of ballots printed. Then the first name shall be placed last and the next series printed, and so shall the process be repeated until each name shall have been first. These ballots shall then be combined in tablets with no two of the same order of names together, except when there is but one candidate. (98 v. 116.)

ELECTION MATTERS.—When judges and clerks of election fail to sign poll-books and tally-sheets, to fill up blanks in the caption, or to carry out the aggregate votes, such omissions and mistakes may be corrected upon the trial of a contest, by parol evidence, and when so corrected, the documents, sustained by the parol proof, are competent evidence of the result of the election. (Howard v. Shields, 16 O. S., 184.)

The evident intent of the law requires that when the polls are once opened, they should be kept open until the hour prescribed for finally closing; but the statute on the conduct of elections, section 2929, is said to be directory, and if so, “a departure from its strict observance will not necessarily invalidate an election, where no fraud has been practiced and no substantial right violated.” (Fry v. Booth, 19 O. S., 25.)

The officers of an election board can not, after dissolving the board and dispersing, return and perform any official act regarding such election. When they have dispersed, they cease to be officers of the election—are *functi officio*. (The State ex rel. Attorney-General v. Donnewin, 21 O. S., 216; Ingerson v. Berry, 14 O. S., 315.)

Poll-books duly certified and returned are *prima facie* evidence of the truth of their contents, but this presumption will be rebutted by proof that they are fraudulent and fictitious to such an extent as to render them wholly unreliable. (Phelps v. Schroder, 26 O. S., 549.)

Quo warranto will lie where no provision for a contest is made by law—as was the case in the election of school directors against the respondent, whom the board recognized, and the fact that the relator has received a certificate is not conclusive. (8 Rec., 432; 4 B., 1065.)

A person voted for under the name of E. H. Smith, whose name is H. E. Smith, there being no such man as E. H. Smith, should have the votes counted, if the judges are satisfied that the person H. E. Smith was intended. (II W. L. M., 589.)

In case a candidate receiving the highest number of votes at an election is ineligible, the next highest candidate is not elected. (13 Cal., 145; 38 Maine, 597; 1 Chandler, Wis., 117.)

McCrary on Elections, section 184: "The safe rule probably is that where an election board are found to have willfully and deliberately committed a fraud, even though it affect a number of votes too small to change the result, it is sufficient to destroy all confidence in their official acts, and to put the party claiming anything under the election conducted by them, to the proof of his votes, by evidence, other than the returns." (See Judkins v. Hill, 50 N. H., 140; Knox Co. v. Davis, 63 Ill., 405; Russell v. State, 11 Kan., 308.)

Receiving illegal or improper votes will not alone vitiate an election. It must be shown affirmatively, in order to overturn the declared result, that the wrongful action changed it. (Dillon on Municipal Corporations, 261.)

§ 77. [Notice of elections.] (§ 3970-11.) The clerk of each board of education shall publish a notice of all school elections in a newspaper of general circulation in the district, or post written or printed notices of said elections in five public places in the district, at least ten days before the holding of the same, which notices shall specify the time and place of such election and the number of members of the board of education to be elected and the term for which they are to be elected, or the nature of the question to be voted upon. (97 v. 354.)

Notice of Election.

Notice is hereby given that an election for members of the board of education in school district, county, Ohio, will be held on the day of November, 190.., at the usual voting places in

said district. At said election there will be [*state number of members to be elected and length of term*].

.....
Clerk of the Board of Education.

....., Ohio,
....., 190..

NOTE.—Notices must be published in a newspaper of general circulation in the district or posted in five public places in the district at least ten days before elections. All school elections, except those for director in township sub-districts, are conducted under the general election laws.

The omission of the sheriff [clerk] to mention in his notice one of the vacancies to be filled is not *conclusive* evidence of the invalidity of the election. Taken in connection with other circumstances, it is competent evidence of fraud or conspiracy. (The State ex. rel. Att'y General v. Taylor; Scarff v. Foster, 15 O. S., 137; The State ex rel. Wetmore v. Stewart, 26 O. S., 216.) But if the sheriff [clerk] fails to give such notice for one of the vacancies to be filled, and in consequence of such neglect, only a small minority of the electors present vote for a person to fill such vacancy, such election is irregular and invalid. (Foster v. Scarff, 15 O. S., 532.)

McCrary on Elections, section 135, says: "It must be conceded that time and place are of the substance of every election, while many provisions which appertain to the manner of conducting an election may be directory only. (Dickey v. Hulbert, 5 Cal., 343.) But it does not follow that due notice of time and place of holding an election is always essential to its validity. Whether it is so or not depends upon the question whether the want of due notice has resulted in depriving any portion of the electors of their rights." (13 N. Y., 350; 12 Mich., 508; see also Foster v. Scarff, 15 O. S., 532.)

The general rule in computation of time *within* which an act is to be done is to exclude the first day and include the last. (McArthur v. Franklin, 16 O. S., 208, 209.)

If an emergency should occur, making it necessary to change the place of holding the election after the regular notice has been given, and if such notice is given as would leave no excuse for not voting on account of the change, the election would not be invalidated by such change. (78 Ill., 171.)

§ 78. [Women may vote and be voted for, for school officers.] (§ 3970-12.) Every woman born in the United States, or who is a wife or daughter of a citizen of the United States, who is over twenty-one years of age and possesses the necessary qualifications in regard to residence, as is provided for men, shall be entitled to vote, and to be voted for, for mem-

ber of the board of education and upon no other question. The law relating to registration shall apply to women upon whom the right to vote is conferred, but the names of such women may be placed on a separate list. (97 v. 354.)

The constitutional power of the legislature to provide for common schools is not limited by the definition of elector in Const. V, Sec. 1, and the right to vote for school officers may be conferred on women. (9 C. C., 134; affirmed, 54 O. S., 631.)

This section limits the voting privileges of women. It does not entitle them vote on such questions as special tax levy, bond issue, erection of public buildings, etc., although the same be for school purposes.

A single woman if of the required age, and a married woman although neither were naturalized, might vote and be voted for, even where their father or husband would not be entitled to vote. A man may be a citizen and still not be entitled to vote.

A member of a school board is not an officer of any political sub-division provided for in the Constitution. *State v. Adams*, 58 O. S., 616.)

§ 79. [Corporate powers of board of education; sales of property exceeding three hundred dollars in value; exchange of real estate with municipal corporation.] (§ 3971.) The boards of education of all school districts now organized and established, and of all school districts organized under the provisions of this title, shall be and they are hereby declared to be bodies politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of property, both real and personal, and taking and holding in trust for the use and benefit of such districts, any grant or devise of land, and any donation or bequest of money or other personal property, and of exercising such other powers, and having such other privileges as are conferred by this title; but when a board of education decides to dispose of any property, real or personal, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell the same at public auction, after giving at least thirty days' notice thereof, by publication in some newspaper of general circulation, or by posting notices in five of the most public places in the district in which such property is situate. Provided, that when such board has twice offered a tract of real estate for sale at public auction, as here-

inbefore provided, and the same is not sold, the board may sell said real estate at private sale, either as an entire tract or in parcels thereof, as the board may deem best, and the president and secretary of the board shall execute and deliver the deed or deeds necessary to complete such sale or sales. Provided, that upon a vote of a majority of the members of any board of education, and a concurring vote of the council of any municipal corporation, that an exchange of any real estate held by such board of education for school purposes, for real estate held by such municipal corporation for municipal purposes, will be mutually beneficial to such school district, and to such municipal corporation, such exchange may be made by conveyances, to be executed by the mayor and clerk of the municipal corporation, and by the president and clerk of such board of education. (1888, March 30; 85 v. 36; R. S., 1880; 70 v. 195, § 37; S. & C., 1350.)

Kind of Corporation.

Liability of Boards for Injury
to Persons.

Liability for Injury to Prop-
erty.

Liability of Member for In-
juries.

Sale or Exchange of Real Es-
tate.

KIND OF CORPORATION.—The effect and intention of this statute is to make school boards corporations with limited powers; however, they can only act in the manner provided by law. They can only create or incur liabilities in the performance of powers granted to them by law. While the courts will be liberal in viewing the acts of these corporate bodies, yet it must be clear that they have acted, only within their statutory powers. For the infraction of legal rights the board may sue and be sued; the action should be brought in the corporate name of the board, and not in the name of the individual members; likewise contracts should always be made in the corporate name, signed by the president and secretary; but no contract is binding upon the board unless authorized by it in the manner provided by law.

The power to contract implies the power to settle with contractors, and to do this in the interest of the district, so as to avoid the expense of litigation. Where a contracting party has rights which he can enforce in equity, a board of education is, like other municipal corporations, authorized to recognize and provide for these as well as for strictly legal rights. (See *Brewster v. Syracuse*, 19 N. Y., 116; *Friend v. Gilbert*, 108 Mass., 408.)

Changing the name of a district is not a change of its corporate character, nor a change in its relations of parties dealing with it. (Robbins v. Sch. Dist., 10 Minn., 310.)

Boards of education have only such powers as are expressly provided in the statute, and persons who deal with such boards are presumed to know the limits within which they can lawfully transact business, and can secure no rights which are enforceable by contract unless the contract is clearly authorized by law. (State ex rel. Dunn et al. v. Freed, Treas., et al., 10 C. C., 294.)

A teacher who was employed by directors of a sub-district of township under the old law may maintain an action for unpaid part of his salary against township board of education, but not against the directors of the local district. (Board of Education v. O'Hara, 2 W. L. Bull., 96.)

A board of education is not subject to *quo warranto*, since it can not be ousted; it is not such a corporation as R. S., Sec. 6761, contemplates, but a state agency. (State ex rel. B'd Ed'n Morgan Tp. v. B'd of Ed'n Riley Tp. et al., 7 C. C., 152.)

Incorporated township for common school purposes is a quasi public corporation. (Bush v. Shipman, 5 Ill., 186.)

School townships are not municipal corporations in their nature or purpose (People v. Travers, 78 Ill., 136); and school districts are but territorial divisions having many of the attributes of a corporation. (Wharton v. School Dist., 42 Pa. St., 358.) They are only *quasi* corporations, and can exercise no powers except those especially conferred by statute. (School Dist. v. Thompson, 5 Minn., 280; Littlewort v. Davis, 50 Miss., 403; Sch. Dist. v. Macloon, 4 Wis., 79.)

LIABILITY OF BOARDS FOR INJURY TO PERSONS.—A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability.

Thus, where a school board permitted wells or uncovered areas adjoining a school building which were constructed for the purpose of letting light into the basement, and were some eight feet deep and from two to four feet across the top, to remain thus, and a child, in playing, fell into one of these wells and was injured, it was held no recovery could be had against the board. (Finch v. Board of Education, 30 O. S., 37.) The opinion discusses the general corporate power, etc., of boards of education.

"Owing to the very limited number of corporate powers," say the court, "conferred on them, boards of education rank low in the grade of corporate existence, and hence are properly denominated *quasi*-corporations. This designation distin-

guishes this grade of corporations from municipal corporations, such as cities and towns acting under charters or incorporating statutes, which are vested with more extended powers and a larger measure of corporate life. This superior grade, from the nature of their organization, benefits received, and power to raise needed funds, are held responsible by common law for private personal injuries caused by their own negligence or that of their servants, whilst the inferior grade of public *quasi*-corporations are liable for damages resulting from their negligence, only where made so by express legislation. This grade includes the defendant; it possesses but limited powers and small corporate life, a corporation in some sense political, but in no sense a municipal corporation." (See Board of Com. of Hamilton Co. v. Mighels, 7 O. S., 109; Biglow v. Inhabitants of Randolph, 14 Gray, 541.)

LIABILITY FOR INJURIES TO PROPERTY.—In a recent case (Board v. Volk, 72 O. S., 469), the supreme court has applied the same doctrine in reference to injuries resulting to property as it had before, in reference to injuries resulting to persons, and held that a board of education is not liable in its corporate capacity for damages where, in excavating on its own lots for the erection of a school building, it wrongfully and negligently carries the excavation below the statutory depth of nine feet, thereby undermining and injuring the foundation and walls of the building of the adjoining property.

In this case the court reiterates the doctrine that in order for a corporation to possess the *quasi* corporation characteristics, as a board of education does, they could not be sued or held responsible unless the statute specifically so provides, and after quoting § 79 (§ 3971), says: "The other parts of the title measure the duties and powers of the board in all respects, so much so that nothing seems left to inference or implication. It may contract and be contracted with, but a contract not authorized by statute is *ultra vires*, and can not be enforced, although the board is capable of suing and being sued. It has no power to bind the school district which it represents on contracts not authorized by law, and it has been so held repeatedly. If it can not bind the district by such contracts, how can it be bound for unauthorized torts of the board?"

It is true that boards of education are authorized, when necessary, to purchase grounds for school and school house purposes and to erect and maintain school houses; to enter into necessary contracts for the erection of proper school buildings and the purchase of school supplies, yet the method of making such contracts is prescribed by statute, so that it is the general assembly speaking through the board as to what may be done and how it must be done. The board is not authorized to commit a tort—to be careless or negligent—and when it com-

mits a wrong or tort, it does not in that respect represent the district, and for its negligence or tort in any form the board can not make the district liable. It is without power to levy taxes except for school and school house purposes, and therefore no levy could be legally made to pay a judgment against it, if one should be recovered for its torts. The property belonging to the board, and to which it holds title in its trust capacity, can not be seized or held to satisfy a judgment for damages, for it is declared in § 81 (§ 3973), Revised Statutes, that "all property, real or personal, vested in any board of education, shall be exempt from tax and from sale on execution, or other writ or order in the nature of an execution."

LIABILITY OF INDIVIDUAL MEMBER FOR INJURIES.—In *Dunlap v. Knapp*, 14 O. S., 64, the supreme court held that a supervisor of roads was not personally liable for injuries that an individual has sustained because of neglect to keep a bridge in repair, and that he was only liable for the penalty prescribed by law, and it seems that the claim for damages for neglect to keep buildings, etc., in repair against a member of a school board would rest on no stronger ground. Where an individual member was sued because he had admitted children to the school in such a manner that the plaintiff's children were deprived of their school advantages, it was held that an officer acting within the scope of his authority is not responsible for an injury, unless it results from a corrupt motive. (*Stewart v. Southard*, 17 O. S., 402; *Ramsey v. Riley*, 13 O. S., 157. See *Gregory v. Small*, 39 O. S., 349; *Thomas v. Wilson*, 40 O. S., 516.)

He is not liable for the negligence of workmen under him. (*Donovan v. McCalpin*, 46 N. Y. Sup. Ct., 111.)

In another case where a teacher was hurt by falling through a defective door, it was held that the member was liable. (*Bassett v. Fish*, 19 N. Y. Supreme Ct., 209), and in (*Minn. Bank v. Brainard*, 51 N. Y. Rep., 814) it is held he is not liable for negligence in making repairs. See § 97 (§ 3988) as to liability, etc.

SALE OR EXCHANGE OF REAL ESTATE.—This statute provides methods of a sale or exchange of real estate, but not for purchase; this is provided for in other sections. (Sec. 95, § 3987, and Sec. 99, § 3991.) The law must be strictly followed; if it exceeds \$300 in value, it must be sold at public auction. Notice must be put up in five of the most public places in the district at least thirty days before the time of sale. If offered twice, it then *only* may be sold at private sale. The authority to sell or exchange must appear on the minutes to be by majority vote of the members of the board of education. Deeds must be made by the corporation through its president and secretary. (See section 3991 (§ 99).)

A corporation must take and grant by its corporate name. (2 Kent, 2d Ed. 357.)

Form of Notice of Sale.

To Whom it May Concern.

Notice is hereby given that on, the day of, 190.., there will be sold at public auction, on the premises, the following described real estate, to wit: (here describe). At the same time and place there will also be offered the following personal property for sale, to wit:; all of said property to be sold to the highest bidder, the personal property for cash, the real estate for one-third cash, one-third in one year, one-third in two years, from date of sale, with interest. The deferred payments to be secured by notes any mortgages on the premises.

By order of the board of education of township.

(Date.)

.....

Clerk of Township.

§ 80. [Title to property vested in boards of education; resolutions and orders to remain valid until changed; contracts, bonds and tax levies protected.] (§ 3972.) All property, real or personal, which has heretofore vested in and is now held by any board of education for the use of public or common schools in any district, is hereby vested in the board of education provided for in this title, having under this title jurisdiction and control of the schools in such district; and all resolutions and orders passed by any board of education shall remain in full force and effect until duly altered or repealed, and nothing in this act contained shall be construed to in any way affect the validity of any contract made nor bonds or certificates of indebtedness issued, by any board of education of any school district, whether created under the provisions of a general or a special act; and all school funds, whether arising from taxation, sale of bonds, or otherwise, in the hands of or belonging to any board of education of any school district, whether created under the provisions of a general or a special act, and all taxes levied by any such board not collected, shall be transferred to the credit of the board of education elected, under the provisions of this act, to succeed the board having such funds to its credit or which made the levy for the uncollected taxes. (97 v. 354.)

HELD IN TRUST, ETC.—The title to school grounds, and other school property, is by express terms of the statute vested in the board of education. But for what purpose?

It is not the private property of the board, but it is authorized to hold it for the state for the promotion and advancement of the education of the youth of the commonwealth, and its control is limited according to the will of the sovereign power. The board is a mere instrumentality of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state. As heretofore stated, these boards are but arms of the sovereign, the state, and the latter has neither authorized, nor permitted by any law, its agents to be sued for tort to either person or property. *Board v. Volk*, 72 O. S., 485.

A dedication for school purposes is for specific use, and confers no power of alienation so as to extinguish the use. *Board of Education, etc., v. Edson et al.*, 18 O. S., 221.

Boards of education are invested with the title to the property of their respective districts in trust for the use of public schools; and a lease of a public school house for the purpose of having a private or select school taught therein, for a term of weeks, is in violation of the trust; and such use may be restrained at the suit of a resident taxpayer of the district. *Weir v. Day, et al.*, 35 O. S., 143.

Where land was conveyed to a township board of education, its successors and assigns, for the use of school purposes only, and the board afterward sold the land at public outcry to C., the board having determined on another site; *Held*, that the mere fact of sale was not a breach of the condition. *Taylor v. Blinford*, 37 O. S., 262.

The board of education being a legal entity empowered to sue, has capacity to sue its defaulting treasurer without resorting to his bond. *Board of Education v. Milligan*, 51 O. S., 115.

CRIMINAL PROVISIONS RELATIVE TO.—*Defacing School house, Penalty for.* (§ 6877, R. S.)—Whoever maliciously injures or defaces any church edifice, school house, dwelling house or other building, its fixtures, books, or appurtenances, or commits any nuisance therein, or purposely and maliciously commits any trespass upon the inclosed grounds attached thereto, or any fixtures placed thereon, or any inclosure or sidewalk about the same, shall be fined in any sum not more than one hundred dollars. (63 v. 175, § 1; S. & S. 280, § 51; 70 v. 216, § 73.)

Penalty for Burning School Property.—Section 6931, R. S., provides that "Whoever maliciously burns, or attempts to burn any . . . school house . . . shall be imprisoned in the penitentiary not more than twenty years."

Penalty for Felony and Stealing.—Section 6835, R. S., provides that "Whoever, in the night season, maliciously and forcibly breaks and enters any . . . school house . . . with

intent to commit a felony, or with intent to steal property of any value, shall be imprisoned in the penitentiary not more than ten years nor less than one year."

Penalty for Breaking into School House to Steal.—A similar penalty is imposed by section 6836, R. S., for entering a school house in the daytime or night season, and attempting to commit a felony. Section 6837, R. S., provides that "Whoever maliciously, in the daytime breaks and enters any . . . school house . . . with intent to steal, shall be fined not more than three hundred dollars, and imprisoned not more than sixty days."

Penalty for Disturbing a Meeting (School).—Section 6896, R. S., provides that "Whoever wilfully interrupts or disturbs any assembly of persons met for a lawful purpose, or any person while he is at or about the place where such assembly is to be held, or is and has been held, shall be fined not more than fifty dollars, or imprisoned not more than ten days, or both." (73 v. 224, § 1; 61 v. 98, § 1; S. & S., 228; 70 v. 216, § 74.)

Members of Board Liable.—A member of a board of education is as liable to prosecution for violently disturbing a school in session as any other person. Such member is also equally liable with any other person for forcibly breaking into a school house for the purpose of admitting any meeting, or for promoting other use of the school house not authorized by a majority of the board of education or by law. In short, an individual member of the board, as such, has no more authority concerning school property than any other individual has. If he is, by law or by the board, constituted a committee to look after the school house, he may exercise such authority; but even then he has no power to open the house for purposes unauthorized by the board. The limitation of course applies, that for mere errors of judgment, with proper purpose and intent to act within the authority vested in him by the board, the law will exonerate him.

What are Public School Houses.—By "public school houses" are meant such as belong to the public, and are designed for schools established and conducted under public authority. The fact that the use of the property is free is not a necessary element in determining whether the use is public. (Gerke v. Purcell, 25 O. S., 229.)

§ 81. [School property exempt from taxation.] (§ 3973.) All property, real or personal, vested in any board of education, shall be exempt from tax, and from sale on execution, or other writ or order in the nature of an execution. 70 v. 195, § 72.)

Constitutional Provision.	Exemption from Taxation.
Assessments and Executions.	

CONSTITUTIONAL PROVISION.—[Taxation by uniform rule.]
 Sec. 2. Laws shall be passed, by taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published, as may be directed by law. (Art. XII, 1851.)

ASSESSMENTS AND EXECUTIONS.—School property is not liable to assessment for street improvement; nor can a judgment be rendered against the board of education for the payment of the assessment out of its contingent fund. (*City of Toledo v. Board of Education*, 48 O. S., 83.)

Sidewalk—school property not assessable for. (*Board of Education v. The City of Toledo*, 48 O. S., 87.)

It must be paid out of the general fund of the city.

Property purchased by a board of education, and upon which there is a mortgage lien, may be sold on foreclosure. (*Board of Education of Findlay v. Stephenson*, 39 Bull., 76; Aff'd by Supreme Court.)

A mechanic's lien or a mortgage could not be enforced, since such enforcement would require an "order in the nature of an execution." (See *Rockel & White's Mechanic's Lien Law*, p. 12.)

For additional provision relating to non-taxation of school property, see section 2732, R. S.

For provisions relating to taxation of school and ministerial lands held under a lease exceeding fourteen years, see section 2733, R. S.

Whether, from the mere fact that the statute now provides that there shall be a contingent fund, the school property could be held, is not decided in *Board of Ed. v. Bowland*, 15 Dec. 335. The mere fact, however, that the members of the board petitioned for it, will not make the board liable, *id.* The opinion of the supreme court in *Board v. Volk*, 72 O. S., 469, would indicate that the board is no more liable under the new code than it was under the former law.

EXEMPTION FROM TAXATION.—As a general proposition it may be said that in order for the property to be exempt it must be actually used for educational purposes. (*Washburn v. Commissioners*, 8 Kan., 344; *Cincinnati Coll. v. State*, 19 Ohio, 110; *State v. Elizabeth*, 4 Dutch., 103; *Detroit, etc., v. Mayor*, 3 Mich., 172; *State v. Ross*, 4 Zabr., 497; *Pace v. Jefferson County*, 20 Ill., 644; *Nazareth v. Commonwealth*, 14 B. Mon., 266.)

In a case in the United States Supreme Court it was held that an exemption of all property "necessary for school purposes" included property not in actual use by the school, but which is rented and the income applied to the support of the school. (*The Northwestern University v. The People*, Sup. Court of U. S., reported in *Am. L. Reg.*, Vol. XVIII, No. 6, p. 366.)

Whether this United States decision would be in all cases followed in Ohio may be questioned, for in the earliest case we have on that subject it is held that the property of literary and scientific societies is only exempt from taxation when used exclusively for literary and scientific purposes. If used for other purposes it is liable for taxation, although the proceeds are in the future to be applied for the promotion of literature and science.

And, furthermore, in the same case, it is held that all laws exempting any of the property in the state from taxation, being in derogation of equal rights, should be construed strictly. (*Cincinnati College v. State*, 19 Ohio, 110.)

In another case, where a library association, which it was conceded was exempt, owned a lot of ground with a block of buildings thereon, constructed as an entirety, and the buildings having a basement and three stories over the same, were divided into rooms adapted for its use and for renting, some of which on each floor are used by it for its purposes; some are rented out, and the rents received are applied exclusively to keeping the property in good repair, and to the purpose of the association, and some are vacant, it was held that such part of said building and appurtenances which are rented and otherwise used with a view to profit, are not exempt from taxation. (*The Cleveland Library Association v. Pelton*, 36 O. S., 253.)

In another case, where the question at issue was whether or not a parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, is exempt, the court held that the exemption was not of such houses as may be used for the support of public worship, but houses used exclusively as places of public worship. (*Gerke v. Purcell*, 25 O. S., 229.)

In this case it is held that schools established by private donations, and which are carried on for the benefit of the pub-

lie, and not with a view to profit, are institutions of purely public charity within the meaning of the provision of the Constitution, and that such institution is exempt from taxation.

In a still earlier Ohio case it was held that a house on school grounds for a professor was not exempt from taxation. (*Kendrick v. Farquhar*, 8 Ohio, 180.)

If a farm be used for the purpose of raising produce to sell and get money to carry on a school, it will not be exempt, the use for educational purposes in such a case is too remote. (*St. Mary's College v. Crawl*, 10 Kan., 448.)

So in a Massachusetts case, where the president and fellows of Harvard College built a dwelling-house on the land of a corporation within the college yard and leased the same to one of their professors, to be occupied by him as a residence for himself and family at an annual rent, it was held that the dwelling-house was not exempt. But in this same case it was stated that it would have been otherwise if the building had been built for one of the professors and had been occupied by him without paying any rent therefor. (*Pierce v. Cambridge*, 2 Cush. (Mass.), 611.)

§ 82. [Conveyances and contracts.] (3974.) All conveyances made by a board of education shall be executed by the president and clerk thereof; no member of a board shall have any pecuniary interest, either direct or indirect, in any contract of the board, or be employed in any manner for compensation by the board of which he is a member, except as clerk or treasurer; and no contract shall be binding upon any board unless it be made or authorized to be made at a regular or special meeting of the board. (70 v. 195, §§ 21, 38.)

Comments.

Resolution for Conveyance.

Pecuniary Interest of Members, etc.

RESOLUTION FOR CONVEYANCE.—If the board decides to sell any of its property it should pass a resolution to that effect. This resolution must, upon the call of an aye and nay vote, receive in the affirmative the vote of a majority of all the members of the board—(§ 89) § 3982—not merely a majority of a quorum or those present.

The resolution may be in the following form:

Resolved, by the board of education of school district, that in consideration of \$. paid to, the president of this board, by, that the said president and, the clerk of this board, are directed to convey by proper warranty deed, to said, the purchaser thereof, the following described real estate:
.....
.....

PECUNIARY INTEREST OF MEMBER, ETC.—Not only does this action forbid any member of the board from having a pecuniary interest in any contract the board may make, but another section, in order to make it effective, provides:

§ 82a. (§ 6975.) A member of a board of education organized under any law of this state who accepts or receives any compensation for his service as such member, except as clerk or treasurer of such board, shall be deemed guilty of embezzlement of the amounts so received, and furnished accordingly. (72 v. 14.)

COMMENTS.—The individual act of a majority of the members of a school board acting separately—as signing contract—are not the corporate acts of the board and do not bind it. (Ohio ex rel. Steinbeck et al. v. Treasurer of Liberty Township, 22 O. S., 144.)

A contract by a firm to sell goods to a board of education, one member of which board is a partner in the firm, is void under section 3974 (§ 82), and any resident taxpayer may obtain injunction against payment thereof. (Grant v. Brouse et al., 1 N. P., 145.)

No contract, appropriation, etc., unless money is in treasury and set apart, except in certain cities. See section 2834b, given in full under § 97 (§ 3988.)

The failure of an officer to attach his official title to his signature will not affect the instrument so far as the district is concerned; provided the contract was authorized and made for the district, and this fact can be shown.

A member of a board of education can not draw wages or pay as superintendent of schools or of buildings, as teacher or janitor, as contractor for fuel, for drawing fuel, or for any other service to the district in which he is serving as such member, except for services as clerk or treasurer. Nor can a local director draw pay for any such service in his sub-district if he is a member of the township board, or if the service is such as the board of education or the statute has authorized the local board to contract for.

There is, perhaps, no reason why a local director who is not a member of the township board of education may not teach, or furnish fuel, or the like, in a sub-district in which he is not a local director. The principles of law without this statute would decide that a party can not be on both sides of a contract. (Piatt et al. v. N. Longworth's Devisees, Executors, et al., 27 O. S., 159, 195; Parsons on Contracts, vol. 1, p. 86; Pollock's Principles of Contracts, p. 253.)

School property should be insured, but not in a company

represented by a member of the board. (See § 6969, R. S.) The attorney-general concurs in this opinion. (See opinions of Attorney-General, vol. F, 36.)

An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify said contract of purchase at the next meeting of the board, is contrary to public policy, and therefore illegal and void, and not enforceable against the members as individuals. (McCortle v. Bates, 29 Ohio St., 419.)

Pending a litigation between the board of education of a township and a special school district therein, as to the custody and control of a fund in the township treasury, the board permitted the treasurer, by a verbal agreement, to use the fund in his business, on his agreeing to pay interest thereon, the object being to earn sufficient by such use to meet the interest with which the board would be charged in the event the pending action should be decided against it. When the treasurer's term expired, and for the same reason the loan was renewed, and a note with sureties taken for the amount then due, payable to the board with interest in ten months, *held*, 1. Such loan was in contravention of public policy, and prohibited by statute. 2. In an action on the note by the board, the sureties thereon were not estopped from setting up the illegality of the transaction as a defense. 3. While the board may do any act in disaffirmance of such an illegal contract, and recover back the money illegally taken from the treasury by an action, or take a note and security for its return, yet it has no power, in the absence of statutory authority for that purpose, to ratify and adopt a contract made in violation of law. (Board of Education v. Thompson, 33 Ohio St., 321.)

There must be an aye and nay vote and a quorum. See § 89 (§ 3982).

See § 206a (§ 6975a), following § 4017, R. S. (§ 206), as when contract is illegal, and penalty, etc.

§ 83. [Boards of education may accept bequests, gifts or endowments; limitation on same.] (§ 3975.) Any board of education may, by the adoption of a resolution, accept any bequest made to them by will or may accept any gift or endowment from any person or corporation, upon the conditions and stipulations contained in the will or connected with the gift or endowment; and for the purpose of enabling such boards to carry out the conditions and limitations upon which the bequest, gift or endowment is made, they are authorized to make all rules and regulations that may be required to fully carry

into effect the provisions of said bequest, gift or endowment; but no such bequest, gift or endowment shall be accepted by any board of education when the conditions of the same shall remove any portion of the public schools from under the control of said board. (97 v. 335.)

§ 84. [Process against boards and how served.] (§ 3976.) The process in all suits against a board of education shall be by summons, and shall be served by leaving a copy thereof with the clerk or president of the board. (70 v. 195, § 68.)

Of course service can be waived by the clerk or president. Without direct authority confession of judgment could not be entered by the clerk or president.

§ 85. [Prosecuting attorney and city solicitor to act as legal adviser of boards of education.] (§ 3977.) The prosecuting attorney shall be the legal adviser of all boards of education in the county in which he is serving, except in city school districts, he shall prosecute all actions against a member or officer of a board of education for malfeasance or misfeasance in office, he shall be the legal counsel of said boards or the officers thereof in all civil actions brought by or against them, and shall conduct the same in his official capacity; provided, that when said civil action is between two or more boards of education in the same county, said prosecuting attorney shall not be required to act for either of them. In city school districts the city solicitor shall be the legal adviser and attorney for the board of education, and shall perform the same services for said board of education as is herein required of prosecuting attorneys for other boards of education. The duties herein prescribed shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city solicitor for the territory wherein a school district is situated, regardless of his official designation. No prosecuting attorney, city solicitor or other official acting in a similar capacity shall be a member of the board of education. No compensation in addition to such officers' regular salary shall be allowed for such services. (97 v. 355.)

OPINION OF ATTORNEY-GENERAL.—The following opinion was rendered by Attorney-General Nash, November 4, 1881:

“Section 3977 (§ 85) of the Revised Statutes provides that the prosecuting attorney of a county shall be the attorney for the school boards within his county, except in city districts, and sets forth what duties he shall perform in this regard. This service is made one of the duties of the prosecuting attorney, which he is bound to render under his salary, as no express provision is made for the payment of such services.

It frequently happens that the prosecuting attorney, on account of his numerous other duties, is wholly unable to perform the service required by this section, and it sometimes happens that cases arise which require that the prosecuting attorney should have assistance in them. In such cases as these the question, ‘Have boards of education the right to employ and pay counsel, or, in short, have such boards the right and authority to pay attorney fees in defending or prosecuting cases in which they are parties?’ becomes important.

“Under such circumstances as I have indicated above, I answer the question in the affirmative, and for this answer I rely on section 3971 (§ 31) of the Revised Statutes. This section makes boards of education bodies politic and corporate, and vests them with the power of suing and being sued. I think that the law which authorizes these boards to sue and be sued by implication confers upon them authority to do all things that are necessary to prosecute successfully or defend a suit.” (Opinions Attorney-General, vol. F. 145.)

Public officers for whom pay is provided by statute will not be allowed compensation for extra work unless this is specially authorized by statute. (9 Neb., 85; X Central L. J., 299.)

The prosecuting attorney is required to prosecute for injuries to timber on school lands. (§ 1279, R. S.)

Prosecuting attorney can not enjoin application of money by school board, but a taxpayer probably can. (State ex rel. v. Board of Education of Van Buren Tp., 11 C. C., 41; State ex rel. Hartman, etc., v. Board of Education, 58 O. S., 656.)

§ 86. [Special meetings of board.] (§ 3978.) A special meeting of a board of education can be called by the president or clerk of the board or by any two members thereof, by serving a written notice of the time and place of such meeting upon each member of the board, either personally, or at his residence, or usual place of business, said notice to be signed by the official or member calling the meeting. (97 v. 355.)

Form of Notice of Special Meeting of Board.

Notice is hereby given that there will be a meeting of the board of of, at o'clock, at, to consider the question*, and other business which may be considered necessary to trans-act.

....., 190..

....., Clerk.

When the statute requires a particular kind of notice, no other notice can be substituted and satisfy the terms of the statute; a notice sent by mail does not comply with the provisions of this section. (Attorney-General.)

Teachers can be elected at special meetings.

The adjourned meetings of a regular session are regular meetings.

Board must provide rules, etc., § 80 (§ 3982).

Meetings are illegal unless held in accordance to law and the by-laws of the board. § 92 (§ 3985).

For election of teachers, see §§ 206 and 89.

§ 87. [Oath of members and other officers. (§ 3979.)

Each person elected or appointed a member of the board of education, or elected or appointed to any office under this title, shall, before entering upon the duties of his office, take an oath or affirmation to support the constitution of the United States and the constitution of the State of Ohio, and that he will perform faithfully the duties of his office; which oath or affirmation may be administered by the clerk or any member of the board. (71 v. 15, § 42.)

This would include a director of a sub-district, a clerk or treasurer of the board, and truant officer, etc. The president and clerk must attend December meeting of township trustees. (§1458 R. S.)

Form of Oath.

The State of Ohio, County, ss.

I,, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Ohio, and will faithfully discharge and perform the duties of of township district, in county, and State of Ohio, during my continuance in office, to the best of my knowledge and ability.

Sworn to and subscribed before me, this day of,
A. D. 190..

.....
.....

* The purpose for which a meeting is called should be stated in the notice.

But a person so elected may appear before any person authorized by law to administer an oath, and may take his oath of office. This should be done in case the member-elect is, for any reason, unable to attend the meeting for organization. The certificate of the officer administering the oath should be sent to the board and copied in the records, to obviate all questions. For the same reason a record should be made of the oath administered to each member.

Officers who have sworn to perform official duties may be compelled to perform them by writ of *mandamus*. This writ issues from the supreme, district or common pleas court. (R. S., § 6742, as amended 1880.)

They may also be restrained from doing illegal acts under color of authority as officers by writ of *injunction*. This writ issues from the supreme or common pleas court or a judge of either; or from the probate court, in case none of the above named judges are in the county. (R. S., § 5573.)

But to boards of education is left a large discretion as to the manner of performing their official duties, and courts will not interfere with this discretion. (Boards of Education v. Minor, 23 O. L., 211.)

Officers required by law to exercise their judgments are not answerable for mistakes of law or mere errors of judgment, where there is neither fraud nor malice. (Jenkins v. Waldron, 11 John. (N. Y.), 114.)

An officer acting within the scope of his authority is only responsible for an injury resulting from a corrupt motive. (Stewart v. Southard, 17 Ohio, 402.)

A public officer who is required by law to act in certain cases, according to his judgment or opinion, and subject to penalties for his neglect, is not liable to a party for an omission arising from a mistake or want of skill, if acting in good faith. Seaman v. Patten, 2 Caine (N. Y.), 312.

But an officer intrusted by the common law or by statute is liable to an action for *negligence* in the performance of his trust, or for *fraud* or neglect in the execution of his office. (Jenner v. Jolliffe, 9 John. (N. Y.), 381.)

The performance of any act prohibited by statute, or any willful neglect of duty, and for which no penalty is provided by enactment, is a misdemeanor.

§ 88. [Vacancies in board of education; how filled.] (§ 3981.) Vacancies in any board of education arising from death, non-residence, resignation, removal from office, failure of person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district, or from other cause, shall be filled

by the board of education at its next regular or special meeting or as soon thereafter as possible, for the unexpired term. A majority vote of all the remaining members of the board can fill any vacancy or vacancies that may exist in said board. (97 v. 355.)

Comments.	Number of Votes Required to
Resignation, to Whom Made.	Appoint.
Holds Until Successor is	
Elected.	

Temporary absence from home will not vacate an office; but if such absence creates embarrassment, the holder ought to resign. All vacancies should be filled before any business is transacted.

RESIGNATION, TO WHOM MADE.—The resignation of a district or sub-district officer must be made to the board, and should be in writing.

A person claiming to be a legal officer, and in possession, can not be voted out by the board, but should be proceeded against by a writ of *quo warranto*. (§ 6760, R. S.)

The section provides that the vacancy shall *be filled without delay*. Hence, if any other business is attempted to be performed before the filling of such vacancy, a point of order should be raised under this clause of the section. The law here provides that no vacancy need exist when a vote is to be taken, hence no item of business enumerated in section 3982 (§ 89) can be transacted which does not receive the votes of a majority of all the members constituting a full board.

HOLDS UNTIL SUCCESSOR IS ELECTED AND QUALIFIED.—(§ 11, R. S.) When an elective office becomes vacant and is filled by appointment, such appointee shall hold office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy; but this section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement of the same, of any one elected to such office before the occurrence of such vacancy.

Tie vote at election; failure to elect or refusal to serve, in township districts; see section 3978 (§ 86).

A resignation takes effect from its date and not from its acceptance, at least to authorize filling the vacancy, the common law rules requiring an acceptance being abrogated in

Ohio except where otherwise specially provided. (Reiter v. State ex rel. 51 O. S., 74.)

Where one, elected to an office, dies before his term begins, no vacancy is thereby created in the office until the end of the term of the existing incumbent; and if this falls within thirty days of the next proper election (§ 11, R. S.), the vacancy can not be filled by an election thereat. (The State ex rel. v. Dahl et al., 55 O. S., 195.)

While the law gives ten days in which to fill a vacancy, it is evidently the intention that it should be filled at the earliest possible date, and before the transaction of business by the board.

NUMBER OF VOTES REQUIRED TO APPOINT A MEMBER.—To elect an officer of the board requires a majority of *all* the remaining members composing the board of education, by law, in the given district. See section 3982 (§ 89.) But though a member holding an office may die, the election of a *member* to fill the vacancy is not the election of an *officer*.

An officer elected for three years continues for three years and until his successor is elected and qualified. (23 Vt., 416.)

The officer, once qualified, continues in the responsibilities of his office until his successor is qualified. There can be no successor until after such qualification takes place. (22 Pick., 122.)

An officer may resign, but he remains in his office, subject to all its responsibilities, until his resignation is accepted. It is generally supposed that an office is held at the will of either party. It is held at the will of both. Resignations are so generally accepted that, with respect to lucrative offices, it has grown into a common notion that to resign is a matter of right. But it is otherwise. The public has a right to the services of all citizens, and may demand them in all civil departments as well as military. (Hoke v. Henderson, 4 Devereux [N. Car.], 1.)

The following case goes still further, holding a resigning officer to his responsibilities and duties until his successor is elected or appointed and qualified:

“Tennessee constitution, article 7, section 5, provides that ‘every officer shall hold his office until his successor is elected or appointed and qualified.’ *Held*, that this applies to a resigning officer, who must continue in the discharge of his duties until his successor is elected or appointed and qualified; that the officer remains under an obligation to obey a writ of *mandamus* notwithstanding his resignation, and is guilty of contempt if he fails to comply with the writ, and the obligation passes to his successor when qualified.” (Watts v. Lauderdale Co., 14 Cent. Law J., 210; U. S. C. C. Dist., Term.)

Acceptance by a corporation is, at common law, necessary to a consummation of the resignation, and, until acceptance by proper authority, the tender is revocable. The right to accept a resignation is a power incidental to every corporation, also to any power of appointment. (Dillon on Mun. Corp., 283.)

In case a board should really lose all of its members, the county commissioners must keep up the school. As they may do all that a board could do, they may appoint a new board, or members enough to proceed with the appointments to the completion of a new board.

§ 89. [Quorum; majority of all members required in certain cases; roll call; pay roll.] (§ 3982.) A majority of the board of education shall constitute a quorum for transaction of business; upon a motion to adopt a resolution authorizing the purchase or sale of property, either real or personal, or to employ a superintendent, teacher, janitor, or other employe, or to elect or appoint an officer, or to pay any debt or claim, or to adopt any text book, the clerk of the board shall call, publicly, the roll of all the members composing the board, and enter on the record required to be kept the names of those voting "aye" and the names of those voting "no"; if a majority of all the members of the board vote "aye," the president shall declare the motion carried; and upon any motion or resolution any member of the board may demand the yeas and nays, and thereupon the clerk shall call the roll and record the names of those voting "aye" and those voting "no," provided, that boards of education may provide for the payment of superintendents, teachers and other employes by payroll if deemed advisable, but in all cases the roll call and record, provided for herein shall be complied with. (97 v. 356.)

STATUTE MUST BE FOLLOWED.—The provision that, at an appointment of a teacher, the clerk of the board shall call the roll of all the members comprising the board to announce his candidate is mandatory and must be complied with. (Pierce v. Board of Education of Special School District No. 7 of West Loveland, 1 N. P., 286.)

It is presumed that the name of the township clerk need not be called, as he does not vote. It is evident that a majority of all the members of the township board entitled to vote will carry a measure. (See section 3915, § 32.) In all cases except

those which are declared to require a majority of all the members composing the board, a majority of a quorum is sufficient to pass a measure, and the roll need not be called unless demanded by a member of the board. In case a vacancy occurs in the board, see note on section 3981 (§ 88).

No member of a board can delegate his power to act to another person, either as a member of the board or otherwise. It is said that this is sometimes done. But acts depending upon such delegated votes are void. For heavy penalty attached to such assumption of official duty, see R. S., section 6913.

Respecting the mode in which contracts by corporations shall be made, it is important to observe that *when the mode of contracting is specially and plainly prescribed and limited, that mode is exclusive*, and must be pursued, or the contract will not bind the corporation; but the courts have sometimes regarded provisions on this subject as directory. (Dillon on Mun. Corp., 465.)

There is no room to doubt that the requirements of this section are mandatory, and that they absolutely forbid the transaction of these enumerated items of business in any other way than that prescribed in this section.

To make any of these contracts in any other mode than that prescribed is to act *ultra vires*.

An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify such contract of purchase at the next meeting of the board, is contrary to public policy, and is, therefore, illegal and void, and not enforceable, either against the board or members thereof as individuals. (McCortle v. Bates, 29 O. S., 419.)

Boynton, J., also said: "Such defenses as would have been allowed had the map vendor retained the claim and brought suit upon it himself, are now admissible against the plaintiff. Assuming, without deciding, that, by the understanding of the parties to the agreement, the defendants incurred personal liability, it was quite clear that there was no error in the action of the common pleas in sustaining the demurrer and dismissing the petition. . . . The statute requires the clerk to . . . record, in a book to be provided for that purpose, all the official proceedings. . . . Clothed with such powers and charged with such duties and responsibilities, it will not be permitted to such boards of education to make any agreement among themselves, or with others, by which their public action is to be, or may be restrained or embarrassed, or its freedom in any wise affected or impaired. The public, for whom they act, have the right to their best judgment after free and

full discussion and consultation among themselves of and upon the public matters intrusted to them in the section provided for by statute. . . . The court will not enter on the inquiry whether such contract would, or would not, in a given case, be injurious in its consequences if enforced. It being against the public interest to enforce it, the law refuses to recognize its claim to validity."

A board of education is a body corporate, and the contracting of a debt by the board, and the directing the issuance of an order to pay it, are corporate acts which can not be performed by the individual members of the board separately; and, therefore, a contract which was signed by the members of the board separately, and delivered to the clerks, and which was afterward, at a subsequent meeting, repudiated by the board, was held not to be binding upon either party. (*State v. Liberty Tp.*, 22 O. S., 144.)

The order of the clerk on the treasurer is not negotiable, and the written acceptance of an order by a treasurer who has gone out of office imposes no greater obligation on the treasurer to pay than if it had been presented without such indorsement.

To rescind action requiring such full majority of the board as this section calls for, or requiring a full two-thirds vote, of course requires a like vote.

This section is to be construed with section 3985 (§ 92), and it is not intended that the action contemplated in this section should be taken in violation of reasonable rules which may have been adopted by the board and in pursuance of section 3985 (§ 92).

Where, under authority given by section 3985 (§ 92), the board has adopted a rule requiring that a resolution providing for a change in text-books should be referred to a committee on text-books, and should not be acted upon for four weeks from its introduction, such rule is reasonable and binding upon the board. *State ex rel. v. Board of Education*, 2 C. C. R., 510.)

A contract for sinking a well made by a local director is within the provisions of this section, and is a purchase, requiring an aye and nay vote. (*Neubauer v. Union Tp.*, 6 N. P., 530.)

Where the minutes show the aye and nay vote and how each member voted but does not state expressly that the roll was called, this is sufficient compliance with this section. (*Ketcham v. Fitches*, 13 C. C., 207.)

An election to fill a vacancy on the board is not an election of an officer, and would not come under the provisions of this section.

In case a board should really lose half or more of its mem-

bers, the county commissioners must keep up the schools. As they may do all that a board could do, they may appoint a new board, or members enough to proceed with the appointments to the completion of a new board; see section 3969 (§ 70).

In all cases except those which are declared to require a majority of all the members composing the board, a majority of a quorum is sufficient to pass a measure, and the roll need not be called unless demanded by a member of the board.

See § 206 (§ 4017).

§ 90. [Absence of president or clerk.] (§ 3983.) If, at any meeting of the board, either the president or the clerk is absent, the members present shall choose one of their number to serve in his place *pro tempore*; and if both are absent, both places shall be so filled; but on the appearance of either at the meeting, after his place has been so filled, he shall immediately assume the duties of his office. (70 v. 195, § 31.)

§ 91. [Record of proceedings and attestation thereof.] (§ 3984.) The clerk of the board shall record the proceedings of each meeting, in a book to be provided by the board for that purpose, which shall be a public record; the record of proceedings at each meeting of the board shall be read at its next meeting, corrected if necessary, and approved, and the approval shall be noted in the proceedings; and after such approval the president shall sign the record, and the clerk shall attest the same. (70 v. 195, § 29; 71 v. 15, § 42.)

PROCEEDINGS PROVED BY THE RECORD.—Where a board at a regularly called meeting make a contract with a teacher, but no record is made of the proceedings, the same may be proved by parol. (Dixon v. Subschool District, 3 C. C. R., 517.)

“A board of education can speak only through its records, and these must accordingly be complete, showing just what the board did, and no more. A motion made by a member, seconded by another member, stated by the president, and voted on by the board, is business and is to be recorded, though not a single member voted for it. Any vote upon it, as to refer, to postpone, or to lay upon the table, is action and should be recorded. If the board adjourn pending the consideration of the motion, the motion should be recorded. If the mover withdraws the motion, by consent of the board, by general consent it may also be omitted from the records.”

The records of a special meeting should state by whom the meeting was called, and the objects mentioned in the notice, as the legality of the proceedings depends on the legality of the call and the conformity of the proceedings with the objects stated in the notice.

If a record is inadequately entered, parol evidence may, it seems, be admitted to show that action was taken which is not found on the records at all. The commissioner of schools of Rhode Island decided, under instruction of Judge Brayton of the supreme court, that "imperfection in a clerk's record of a resolution does not render invalid a tax properly voted." Yet all these imperfections in the record lead to troublesome litigation, often to questions which only courts of law can decide, and in which their decision may be such as to defeat what was attempted to be done in the case.

School districts are required by law to keep an account of their proceedings by a sworn clerk, and such proceedings can be proved only by the record, or a copy thereof duly authenticated. (38 Me., 164.)

The power to amend the records exists with the clerk while he is in office, but not after his term expires, nor for any purpose other than to make them truthful and complete as to fact. (11 Mass., 477; 17 Me., 444.)

Records of quasi corporations are not considered of that absolute verity that parol testimony is inadmissible to show facts upon which the record is silent. (*State of Indiana v. John et al.*, 5 Ohio, 136.)

Vote must be recorded, when, § 89 (§ 3982).

§ 92. [Boards to make rules; illegal meetings.] (§ 3985.)

The board of education of each district shall make such rules and regulations as it may deem necessary for its government and the government of its appointees and the pupils of the schools; and no meeting of a board of education not provided for by its rules or by law shall be legal unless all the members thereof have been notified as provided for in section thirty-nine hundred and seventy-eight (§ 86). (97 v. 356.)

Comments.

What are Proper Rules.

Reading Bible in Public
Schools.

COMMENTS.—The act of the board of education and the teachers, in matters of organizing, grading and governing the school, will be conclusive, unless the power is abused or perverted under some apparently reasonable pretense. (23 Pick., 224; 2 Cush., 198.)

It is competent for boards of directors to provide rules that pupils may be suspended from the schools in case they shall be absent or tardy, except for sickness or other unavoidable cause, a certain number of times within a fixed period. (31 Iowa, 562.)

"In the school room the teacher has the exclusive control and supervision of his pupils, subject only to such regulations and directions as may be prescribed or given by the school board." (Barden School Law.)

Children on their way to and from school are under the control of their teacher. (43 Bull., 12.)

As the act authorizing the board to make rules does not provide how they shall be enforced, the board has discretionary power over the subject. A rule that a pupil not prepared with a rhetorical exercise should be suspended unless excused for cause is reasonable. Neither the board nor the teacher suspending a pupil under such rule is liable for damages. (Sewell v. Bd. of Education, etc., 29 O. S., 89.)

The rules must not be inconsistent with section 3982. (Bd. of Education v. Best, 52 O. S., 138, 149.)

See *State ex rel. v. Board of Education of Cleveland et al.*, 2 C. C., 510, under section 4020-14 (§ 214).

If a deliberate body adopts rules, but no rules for suspending a rule, a suspension can not be by a bare majority, for the rule would then have no force as a rule. (*State ex rel. v. B'd of Education of Cleveland et al.*, 2 C. C., 510, 517.)

Corporal punishment may be inflicted if such are the rules of the school, and an unknown predisposition to certain diseases will not make an otherwise proper punishment tortuous. (*Quinn v. Nolan*, 4 Bull. 81.)

A reporter is on the floor of a school board as a privilege and not as a right, a gallery being provided for the rest of the public, and the board may expel him. That he was on the floor by a rule of the board, and that another rule changing the rule can not be had without laying over for a meeting, is an objection on a point of order which persons not members can not avail themselves of. (*Robert Corre, Plaintiff in Error, v. The State of Ohio, Defendant in Error*, 9 Bull., 242.)

A court may review the action of a board and pass upon the reasonableness of any of its rules, but if they have erred, while discharging their duty in good faith, they are not liable to action therefor. (32 Vermont 224.)

WHAT ARE PROPER RULES.—In other states it has been held that the officers may prescribe necessary rules for classification of pupils as to studies they are following, and promotion, but can not expel for refusing to study a required

branch that could be omitted without interfering with the classes, where the parent demands that it be omitted, and where they refused to admit a pupil to the high school unless he complied with rules as to course of studies, the request by parent as excusing him from grammar recitals should have been followed. (*Trustees v. People*, 87 Ill., 303.)

Where book-keeping was not one of the branches required by law, but the board were authorized to have higher branches taught than those enumerated, and where a scholar refused to pursue that study and was rejected forcibly from the building, she was awarded damages. (*Rulison v. Porb*, 79 Ill., 567.)

A rule barring the doors of school houses against little children coming from a great distance in winter, for being a few minutes tardy, is unreasonable and unlawful. (*Thompson v. Beaver*, 63 Ill., 350.)

A rule suspending pupils for absence for six half-days without a valid excuse is a reasonable rule. (*Churchill v. Fenke* (Ill.), 13 Brad., 520; *King v. Jeff. Sch.*, etc., 71 Mo., 628.)

A student may be required to submit to any proper rule necessary for the good government of the school. (*State v. White*, 82 Ind., 286.)

The teacher has no right to enforce same by beating him for not studying certain branches; the proper remedy is expulsion. (*State v. Mizner*, 50 Iowa, 152.)

Expelling a boy because he accidentally broke a window playing ball, and did not pay for it as required by a rule of the directors, was not upheld. (*Perkins v. Directors*, 56 Iowa, 152.)

Expulsion for being tardy is a proper rule. (*Bendick v. Babcock*, 31 Iowa, 562; *Russell v. Lynnfield*, 116 Mass., 366.)

Expelling a Catholic scholar for not complying with a rule which required the use of the Bible in the school was sustained. (*Donahue v. Richards*, 38 Me., 379.)

Regulations forbidding the attendance of immoral or licentious persons can be enforced, although the conduct of such persons may be proper while at school. (*Sherman v. Charlestown*, 8 Cush., 160.)

Where the pupil refused to obey the rule, that the school should be opened by prayer and reading from the Bible, and that during prayer and reading from the Bible the pupils should bow their heads, but might be excused at request of the parent, and a pupil was expelled for refusing, and his parent refused to request his being excused, his expulsion was sustained. (*Spitler v. Woburn*, 12 Allen, 127.)

Where the board fails to record the rules it will not render them void. (*Russell v. Lynnfield*, 116 Mass. 365.)

A rule prohibiting an expelled student from attending pub-

lie exhibitions given at the normal schools of the state is tyrannical, and can not be enforced if the party conducts himself properly at the exhibitions. (*Hughes v. Goodell* (Pa.), 3 Pitts. R., 264.)

A teacher suspending a pupil for using tobacco in violation of a rule adopted by the teacher, the directors objecting to the rule and discharged the teacher, the court upheld the board, they only having the power to suspend, the teacher could only suspend temporarily. (*Parker v. Sch. Dist.*, 5 Lea (Tenn.), 525.)

Where Catholic parents requested permission of their children to be absent on Catholic holidays, the rule of the committee suspending for absence was sustained. (*Ferriter v. Tyler*, 48 Vt., 444.)

Where the teacher required the pupil to write English compositions and suspended for not complying with the rule, he was sustained. (*Guernsey v. Pilkin*, 32 Vt. 226.)

In another case where parent asked teacher to excuse child from studying geography and teacher punished the child for complying with request, it was held that she exceeded her authority. (*Morrow v. Wood*, 25 Wis. 59.)

The court declined to follow this case in *Kidder v. Chellis*, 59 N. H., 473.

Where the school board was opposed to secret fraternities, and passed a rule that all students who should thereafter become members of any high school fraternity should be denied all the privileges of the high school except the classroom, such a rule was upheld as being within the power of the board. (*Wayland v. Board of School Directors*, 86 Pac. Rep. (Wash., 1906), 642.)

READING BIBLE IN PUBLIC SCHOOLS.—It has been seriously contended that a rule requiring the reading of the Bible and offering prayer conflicted with the constitutional rights of the individual. This question was directly before the common pleas court of Mahoney county, and it was there held such a rule was valid and did not interfere with any constitutional rights of the individual. (*J. B. Nessel v. R. W. Hain*, 1 N. P., 140.)

It has never come directly before our supreme court. In *The Board, etc., v. Minor*, 23 O. S., 211, it was held that the board could prohibit its use, because the legislature had placed the management of the public schools in the board of education, etc., and that the Constitution of the state does not enjoin or require the reading of religious books or religious instructions in the public schools. The briefs and opinion in this case are very interesting reading.

This matter has recently been thoroughly gone over by the decision of the supreme court of our sister state, Ken-

tucky, in which all the cases are reviewed. In this case, *Hackett v. Brookville*, decided May 31, 1905, the judge (O'Rear) says:

"J., appellant, who resides in the town of Brooksville, and has children attending the Brooksville graded common school, brought this suit against the trustees and teachers of the school, seeking an injunction against the use of the English translation of the Bible, known as the 'King James' or 'Authorized Edition,' and to prevent the teachers from opening the school with prayers or songs alleged to be of a denominational character. On full hearing the injunction was denied, and the petition dismissed.

"To get at the exact question presented for decision on this appeal, we will eliminate the allegation concerning worship of God by singing of sectarian songs. There was no proof whatever that any songs of any kind had been sung during the school year in which the suit was brought, nor was it either required or permitted. Whether it was permissible to have sung the songs complained of is not, therefore, a matter considered by the court.

"Appellant invokes section 189 of the Constitution of Kentucky, and section 4368, Ky. St. 1903, which read as follows:

"'No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of any church, sectarian or denominational school.' (Section 189, Const.)

"'No books or other publications of a sectarian, infidel or immoral character, shall be used or distributed in any common school; nor shall any sectarian, infidel or immoral doctrine be taught therein.' (Section 4368, Ky. St. 1903.)

"The Brooksville graded common school is maintained by the state by the imposition of taxes. It is open alike to all white children within certain ages who or whose parents are residents of the district. It is in no sense a sectarian church or denominational school. Section 189 of the Constitution was aimed not to regulate the curriculum of the common schools of the state, but to prevent the appropriation of public money to aid schools maintained by any church or sect of religionists. If the constitution deals directly with the question of compulsory worship, it is in section 5, which reads as follows: 'No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights,

privileges or capacities of no person shall be taken away, or in any wise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma, or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.' If, under the guise of public instruction, children should be required to attend schools where worship of God was compulsory, it would seem to be within the prohibition of that section. We find from the evidence in this case that while chapters of passages from the Bible (King James translation) were read, and prayers were offered by the teachers at the opening of the school each morning, appellant's children, who are members of the Roman Catholic Church, were not required to attend during those exercises, nor were they or others who were conscientiously opposed to doing so required to participate in them.

"Two questions are presented by the record for decision: (1) Does the offering of prayer to God in opening school, such as was offered in the Brooksville school, make that school a 'sectarian school,' within the meaning of section 189 of the Constitution? (2) Is the King James translation of the Bible a 'sectarian book' within the meaning of section 4368, Ky. St.?

"The prayer that was offered, and which it is urged converted the school into a sectarian school, is as follows: 'Our Father who art in heaven, we ask Thy aid in our day's work. Be with us in all we do and say. Give us wisdom and strength and patience to teach these children as they should be taught. May teacher and pupil have mutual love and respect. Watch over these children, both in schoolroom and on the playground. Keep them from being hurt in any way, and at last, when we come to die, may none of our number be missing around Thy throne. These things we ask for Christ's sake. Amen.'" It has not been pointed out to us wherein the prayer quoted is sectarian in its construction. The Rev. Father James A. Cusack, a witness for appellant, asseverates that, in his opinion, it is sectarian. But he admits that there is nothing in it repugnant to the doctrines of his religious belief (Roman Catholic). Nor does he claim that it is promulgated, authorized or used by any sect of religionists whatever. As neither the form nor substance of the prayer complained of seem to represent any peculiar view or dogma of any sect or denomination, or to teach them, or to detract from those of any other, it is not sectarian, in the sense that the word is commonly used and understood, and as it was evidently intended in the section quoted. The constitutional convention, in framing the organic law for all the people of the state, must be presumed to have used ordinary words, not according to the peculiar views of a few, but as generally used. The word

'sectarian,' from the connection in which it is used, can not be given the construction contended for by appellant, which seems to be that any form of prayer not authorized by a particular church is sectarian.

"Though it be conceded that any prayer is worship, and that public prayer is public worship, still appellant's children were not compelled to attend the place where the worshipping was done during the prayer. The school was not 'a place of worship,' nor are its teachers 'ministers of religion,' within the contemplation of section 5 of the constitution, although a prayer may be offered incidentally at the opening of the school by a teacher. Meetings of the General Assembly are opened by prayer, and other state institutions authorize the worship of God. They have never been regarded as fostering sectarian teachings. The complaint in this case goes only to the sectarian feature of the exercises, not because they were religious. It is not contended that it was the purpose of the Constitution to prevent worship, nor to prevent teachers in the public schools from assuming worshipful relations. The great aim was to keep Church and State forever separate as distinct institutions; to prevent the government of one from assuming rightful control of the government of the other. Nor is it clear that it was intended to keep religion out of the school, though it is apparent that one aim, at least, was to keep the 'church' out. The question is not presented, and is not, therefore, decided, whether any exercise which partakes incidentally of worship is prohibited.

"The main question, we conceive to be, is the King James translation of the Bible, or, for that matter, any edition of the Bible, a sectarian book? There is, perhaps, no book that is so widely used and so highly respected as the Bible; no other that has been translated into as many tongues; no other that has had such marked influence upon the habits and life of the world. It is not the least of its marvelous attributes that it is so catholic, that every seeming phase of belief finds comfort in its comprehensive precepts. Many translations of it, and parts of it, have been made from time to time, since two or three centuries before the beginning of the Christian era. And since the discovery of the art of printing and the manufacture of paper in the sixteenth century, a great many editions of it have been printed. There is controversy over the authenticity of some parts of some of the editions. And there are some people who do not believe that any of it is the inspired or revealed word of God. Yet it remains that civilized mankind generally accord to it a reverential regard, while all who study its sublime sentiments and consider its great moral influence must admit that it is, from any point of view, one of the most important of books. That it has

drawn to its careful study and research into its history and translations so many profound scholars of history, is not to be wondered at. The result has been that, while many editions of the several translations have been made, those based upon the revision compiled under the reign of King James I, 1607-1611, and very generally used by Protestants, and the one compiled at Douay some time previous, and which was later adopted by the Roman Catholic Church as the only authentic version, are the most commonly used in this country. That the Bible, or any particular edition, has been adopted by one or more denominations as authentic, or by them asserted to be inspired, can not make it a sectarian book. The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect as such, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. Nor is a book sectarian merely because it was edited or compiled by those of a particular sect. It is not the authorship nor mechanical composition of the book, nor the use of it, but its contents, that give it its character. Appellant's view seems to be that the church is the custodian and interpreter of the Bible as God's word. From that it is supposed that any Bible not put forth by authority of a church claiming that prerogative is sectarian. The question is not whether the version used is canonical or apocryphal. That question does not at all enter into the matter. Otherwise it would inevitably lead to the state that any book not favored by some church authority, or which may be supposed by it to be hostile to its teachings, would be sectarian. In that way the authority of a church could largely control the course of study in the public schools by issuing its bull against certain scientific or moral treatises as being atheistic or heretic. The very mischief aimed at by the framers of the Constitution and by the people adopting it would thus be accomplished, viz., the interference in matters of state by the church.

If the legislature or the constitutional convention had intended that the Bible should be proscribed, they would simply have said so. The word 'Bible' is shorter and better understood than the word 'sectarian.' It is not conceivable that, if it had been intended to exclude the Bible from public schools, that purpose would have been obscured within a controversial word. Nor can we conceive that under the American system of providing thorough education of all the youth, to fit them for good citizenship in every sense, the legislature or the constitutional convention could have intended to exclude from their course of instruction any consideration of such a work whose historical and literary value, aside from its theological aspects, would seem to entitle it to a high place in any well-ordered course of general instruction. The history of a re-

ligion, including its teachings and claim of authority—as, for example, the writings of Confucius or Mahomet—might be profitably studied. Why may not also the wisdom of Solomon and the life of Christ? If the same things were in any other book than the Bible, it would not be doubted that it was within the discretion of the school boards and teachers whether it was expedient to include them in the common school course of study without violating the impartiality of the law concerning religious beliefs. The objection does not appear to be to the matter. It is to the publication.

“A learned witness for appellant, who gives it as a matter of religious belief and teaching, says that the church is the interpreter of the Bible, but that the Protestants teach on the contrary that every one is his own interpreter. The constitution may be said to teach, too, that every one is his own interpreter, for it guarantees that every one may worship God (which is supposed to include the study of His revealed word) according to the dictates of his own conscience. Children are taught the Constitution in common schools. May it not be said, then, with equal force that to teach the Constitution, which itself teaches the right of perfect freedom in the worship of God, is sectarian, because some sect might deny that it was right to teach the children to worship God in any way except according to the teachings of that particular sect? Milton, Newton, Galileo, as well as Wickliffe, Whittingham and Tyndale, came under the bans of the church. The philosophy and the writings of these great thinkers, wherein they do not teach sectarianism, may be used in the public schools, and in some part are so used, in spite of the fact that at one time they were believed to be hostile to God’s revelations as interpreted by the church. This same question in one form or another has come before the courts of the country a number of times. It has not been so free from doubt that the conclusions of the judges have always been harmonious. This has been in part owing to the differing expressions of the constitutions and statutes being interpreted. While allowing that because of those differences in language the opinions may not appear to be precisely in point, yet they reflect the drift of judicial opinion in this country, so far as it has been expressed, concerning the main idea—whether the Bible is a sectarian book. Likewise whether it may be read in public schools at all. While some of the constitutions construed in terms prohibit the use of sectarian books in public schools, yet, independent of those provisions, it seems to be generally conceded that to teach sectarianism in a public school should be violative of religious freedom, which is guaranteed by every Constitution. With this explanation we will briefly review the decisions bearing on the subject.

“One of the earliest cases, celebrated for the great learning displayed, as well as by the distinguished ability of the judge who wrote the opinion, is *Vidal v. Girard’s Executor*, 2 How. (U. S.), 127; 11 L. Ed., 205, opinion by Mr. Justice Story. The question for decision, so far as it bears on this case, was whether a charitable bequest of the late Stephen Girard, establishing a college, prohibited the teaching of Christianity to its pupils. The will contained this restrictive clause: ‘I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatever, shall ever hold or exercise any station or duty whatever in said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of said college.’” The intention of the testator, so far as it is not unlawful, was as the law of the case. The question was, did he intend to exclude the teachings of Christianity or its being taught by the clergy? The testator himself furnished this key to his thought (page 133 of 2 How. [11 L. Ed. 205]): ‘In making this restriction I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a multitude of sects and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce; my desire is that all the instructors and teachers in the college shall take pains to instill into the minds of the scholars the purest principles of morality so that, in their entrance into active life, they may, from inclination and habit, evince benevolence toward their fellow-creatures, and a love of truth, sobriety and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.’ It would be difficult to express a more fitting description of the underlying principles of our government in its treatment of the subject of public education. In construing those provisions of the will which we have quoted as bearing particularly on the subject whether the Bible and its teachings might be employed in the college by lay teachers, the court said: ‘Why may not the Bible, and especially the New Testament, without note or comment, be read and taught as a Divine revelation in the college; its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated? What is there to prevent a work, not sectarian, upon the general evidence of Christianity, from being read and taught in the college by lay teachers? Certainly there is nothing in the will that prescribes such studies. Above all, the testator positively enjoins ‘that all the instructors and teachers in the college shall take pains to instill into the minds of the scholars the purest principles of morality, so that, on

their entrance into active life, they may, from inclination and habit, evince benevolence towards their fellow-creatures, and a love of truth, sobriety and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.' Now, it may be asked, What is there in all this, which is positively enjoined, inconsistent with the spirit of truths of Christianity? Are not these truths all taught by Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety and industry so powerfully and irresistibly inculcated as in the sacred volume? The testator has not said how these great principles are to be taught, or by whom, except it be by laymen, nor what books are to be used to explain or enforce them. All that we can gather from his language is that he desired to exclude sectarians and sectarianism from the college, leaving the instructors and officers free to teach the purest morality, the love of truth, sobriety and industry, by all appropriate means, and, of course, including the best, the surest and the most impressive. Two points are emphasized by the reasoning of the learned judge: (1) That it was sectarianism that was prohibited, and (2) that the Bible is not a sectarian book—which are the two points most prominent in this case.

"Donahue v. Richards, 38 Me., 379, 61 Am. Dec., 256, was an action against a school board for expelling a pupil who refused to read the English version of the Bible, that book having been adopted by the board as one to be used by the pupils in the course of the school work. We note that counsel for appellee contends that this case ought not to be regarded as authority, because there was neither statute nor constitutional prohibition on the subject of sectarian teaching. Yet the court held that: 'The common schools are not for the purpose of instruction in the theological doctrines of any religion or of any sect. The state regards no sect as superior to any other, . . . and, if the tenet of any particular sect were so taught, it would furnish a well-grounded cause of complaint on the part of those who entertained different or opposing religious sentiments.' The court held that the King James translation of the Bible was not a sectarian book. It was said: 'The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or an affirmance of the Pagan creeds.'

"In Spiller v. Inhabitants of Woburn, 12 Allen (Mass.), 127, it was held that the public school committee did not exceed their authority in passing an order that the Bible should be

read at the opening of the schools on the morning of each day. 'No more appropriate method could be adopted,' said the court, 'of keeping in mind of both teachers and scholars that one of the chief objects of education, as declared by the statutes of this commonwealth, and which teachers are especially enjoined to carry into effect, is to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice, and a sacred regard for truth.'

"It is not deemed necessary in this state to define by statute now the purposes of public education. They are at least as broad as the broadest under any similar system in use in any of the states.

"*Pfeiffer v. Board of Education of District*, 118 Mich., 560, 77 N. W. Rep., 250, 42 L. R. A., 536, was an application to the court to compel the board of education to discontinue the use of a certain book known as 'Readings from the Bible' in the public schools of Detroit. The Constitution and laws of Michigan on the subject of religious freedom are substantially as are ours, save there was no express inhibition of sectarian instruction in public schools. The question decided by the court was that Readings from the Bible, though it was used as a text-book in the school, did not violate constitutional provisions guaranteeing to every one the right to worship Almighty God according to the dictates of his own conscience; nor was it a compulsion of any person to attend or support any place of religious worship, or to pay taxes to any minister of the gospel or teacher of religion; nor was it an appropriation of the public money for the benefit of any religious sect or society; nor was it a diminution of the civil rights of any person on account of his religious belief. One judge dissented from the opinion of the court.

"In *Moore v. Monroe*, 64 Iowa, 367, 20 N. W. Rep. 475, 52 Am. Rep. 444, it was shown that the teachers of the school were accustomed to occupy a few minutes each morning in reading selections from the Bible, in repeating the Lord's Prayer and singing religious songs. The plaintiff had two children in the school, but they were not required to be present during the time thus occupied. A statute of that state provided: 'The Bible shall not be excluded from any school or institution in this state, nor shall any pupil be required to read it contrary to the wishers of his parent or guardian.' The Constitution of the state prohibited the legislature from passing any law interfering with the free exercise of religious worship, or compelling any person to pay taxes to support any religion, or for building any place of worship, or the maintenance of any ministry. The plaintiff's contention was that by the use of the school house as a place for reading the Bible, repeating the Lord's Prayer and singing religious songs, it was made a place

of worship; that his children were compelled to attend a place of worship, and he, as a taxpayer, was compelled to aid in building and repairing a place of worship. The court held that the statute did not have any of the effects claimed by the plaintiff. In the absence of such a statute, a rule of the school board to the same effect could not, of course, violate the same constitutional principles, if the statute would not have done so.

"The supreme court of Illinois, in *McCormick v. Burt*, 95 Ill., 263, 35 Am. Rep., 163, held that a rule of the directors of a public school requiring the reading of a King James edition of the Bible for fifteen minutes each morning, at which, however, no one was required to be present or to participate in, was not unconstitutional as interfering with the religious conviction of the plaintiff and his father, who were patrons of the school, and Roman Catholics.

In none of the states from which the foregoing opinions have been cited was there an express prohibition of the use of sectarian books. Still in all of them there was the familiar and fundamental constitutional provision guaranteeing religious freedom, which would have been violated as was held in every instance, either in terms or by necessary implication, by the teaching of sectarian doctrines. That such would have been the result of such teaching seems to us to perfectly obvious. In the very learned and exhaustive note by Judge Freeman to *County of Cook v. Industrial School*, 8 Am. St. Rep., 386 (case reported in 125 Ill., 540, 18 N. E. Rep., 283, 1 L. R. A., 437), it is shown that the Constitution of twenty-four states contain provisions prohibiting the payment of moneys or any appropriation or grant for the support, benefit, or in aid of sectarian schools. The editor, commenting on the constitutional provisions mentioned, and others where they are silent upon the matter of sectarianism, says: 'In view of the above decisions and constitutional provisions, we conclude that the words used in the several Constitutions, in point, where the language does not expressly so indicate, must have been intended by the people who ratified them to provide against the promulgation or teaching of the distinctive doctrines, creeds, or tenets of any particular Christian or other religious sect in schools or institutions where such instruction was to be paid for out of the public funds, or aided by such funds or by public funds, or aided by such funds or by public grants, and that a school or institution is sectarian when the doctrines or tenets of some particular faith, sect, or religion are taught to the exclusion of others; and especially so where the school or institution has a distinctive or strict denominational name descriptive or indicative of the fundamental doctrines of the sect to which it belongs; or where a school or institution is under

the exclusive control of a sect, having such name, and by a course of instruction excluding all others, seeks to inculcate its tenets alone, it is then sectarian; and it makes no difference that pupils of all sects, denominations and religious beliefs, or those of no beliefs, are permitted the advantages of such school or institution. It is what is taught that is the determining factor.'

"This brings us to the consideration of the authorities relied on by appellant.

"State v. District Board of School District, No. 8, of the City of Edgerton, 76 Wis., 177, 44 N. W. Rep., 967, 7 L. R. A., 330, 20 Am. St. Rep., 41, is the principal case cited. The questions there presented were whether the reading of selected portions of the King James' translation of the Bible during school hours violated the rights of conscience, compelled complainants to aid in support of a place of religious worship, and was sectarian instruction. All three propositions were in the affirmative. The decision is apparently against the weight of authority. The court seemed to realize as much, if they should be regarded as all bearing on the same principle. Speaking of them, but not discussing them in detail, the court said: 'A number of cases in different states, supposed to have a bearing upon the main question here considered and determined (to wit, whether the King James version of the Bible is a sectarian book), have been cited, and quotations made therefrom at considerable length by the respective counsel and by the circuit judge overruling the demurrer to the answer. None of the states in which those decisions were made seem to have in their Constitutions a direct prohibition of sectarian instruction in the public schools. It is believed that this state was the first which expressly embodied the prohibition in its fundamental law, and we are not aware of any direct adjudication of the question under consideration.' The court seems to turn the case upon the fact that the King James version, 'the whole of it,' was used as a reading book in the school. The opinion admits that text-books founded upon or containing extracts from the Bible might be properly used.' It was even said: 'The constitutional prohibition of sectarian instruction does not include them, even though they may contain passages from which some inferences of sectarian doctrine might possibly be drawn. Furthermore, there is much in the Bible which can not justly be characterized as sectarian. There can be no valid objection to the use of such matter in the secular instruction of the pupils. Much of it has great historical and literary value, which may be thus utilized without violating the constitutional prohibition. It may be used to inculcate good morals—that is our duty to each other—which may

and ought to be inculcated by the district schools. No more complete code of morals exists than is contained in the New Testament, which reaffirms and emphasizes the moral obligations laid down in the Ten Commandments.' With profound respect to the supreme court of Wisconsin, we are nevertheless unable to see how its position can be maintained logically. For it takes no notice of the conscientious conviction of the Jews, or non-believers, any of whom may have as valid objection to the use of any part of the New Testament as Roman Catholic citizens have to the King James version. It seems to narrow the question down to matter of canonical approval of the printed volumes. The court does not attempt to argue, nor do we see how it could be maintained, that that fact alone could make a book sectarian which in its matter was not inherently so.

"The next case is *State of Nebraska ex rel. Freeman v. Schere*, 91 N. W. Rep., 846, 93 N. W. Rep., 169, 59 L. R. A., 927. The Constitution of Nebraska provides: "No sectarian instruction shall be allowed in any school or institution supported in whole or in part, by the public funds set apart for educational purposes. The action complained of was the reading of sections and extracts from the 'King James Version or translation of the Bible,' and the signing of certain religious and sectarian songs, and the offering of prayer to the Deity. The court said: 'We do not think it wise or necessary to prolong a discussion of what appears to us an almost self-evident fact—that exercises such as are complained of by the relator in this case both constitute religious worship and are sectarian in their character, within the meaning of the Constitution. Nor do we feel inclined to make what might be looked upon as a spurious exhibition of learning by quoting at length from the many judicial decisions and utterances of eminent men in this country concerning the subject. Perhaps the case most nearly in point, because of similarity both of facts involved and constitutional enactments construed to the case at bar, is *State ex rel. Weiss v. District Board*, 76 Wis., 177. 44 N. W. Rep., 967, 7 L. R. A., 330, 20 Am. St. Rep., 41.' It is undeniably the peculiar province of the Supreme Courts of the states to place final authoritative construction upon the Constitutions of their respective states in matters involving solely their internal policy. Whether the reasons given by the court are sound are not, is not material as affecting the binding force of the construction upon citizens and others whose actions come up for consideration by the government of that state. But where the opinion is cited abroad as persuasive argument why its conclusions should be elsewhere adopted, it is of the first importance that its reasoning should be sound.

That similar provisions, or the same principle of law have frequently come before other high courts of last resort, and been by them decided in a certain way, is a fact that can not safely be ignored. It is more than likely that a general concurrence of judicial opinion on the same subject is apt to be right. Due deference to the enlightened judgment of the learned profession of law, and to all concerned, leave no alternative but to consider all that has been said by courts of equal rank upon the subject of such universal importance as to have been incorporated in some form in every constitution of the states of America. Two of the judges of the Supreme Court of Nebraska confined their concurrence to the point of 'sectarian instruction.' On petition for rehearing the chief justice filed a response on behalf of the court. The only case admitted to have a direct bearing on the question opposing the court's conclusions was the Michigan case cited above. But we observe what appears to us to be a modification of the original opinion in parts of the response. After pointing out that there are admittedly verbal differences between the King James and the Douay translations of the Bible, which some sectarians regard as material, the court said: 'But the fact that the King James translation may be used to inculcate sectarian doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible in either version in the public schools. It is not proscribed either by the Constitution or the statutes, and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege by attempting to propagate their own peculiar theological or ecclesiastical views and opinions. The point where the courts may rightfully intervene, and where they should intervene without hesitation, is where legitimate use has degenerated into abuse—where a teacher employed to give secular instruction has violated the constitution by becoming a sectarian propagandist. . . . The section of the Constitution which provides that "no sectarian instruction shall be allowed in any school or institution supported, in whole or in part, by the public funds set apart for educational purposes," can not under any canon of construction with which we are acquainted, be held to mean that neither the Bible nor any part of it, from Genesis to Revelation, may be read in the educational institutions fostered by the state. The court also wisely noted that sectarian instruction might occur from frequently reading, even without note or comment, of 'judiciously selected passages,' and observed that whether such practices existed as amounted to sectarian instruction must be determined upon the facts of each particular case. We find ourselves in entire

accord with the views quoted above from the response of the Nebraska Supreme Court.

"In *Board of Education v. Minor*, 23 Ohio St., 211, 13 Am. Rep., 233, the only question presented or decided was whether the school board might not prohibit the reading of the Bible in the public schools. It was held that they could; that nothing in the laws of that state made it compulsory upon the boards or teachers to use the Bible as a text book.

"We believe the reasons and weight of the authorities support the view that the Bible is not of itself a sectarian book, and, when used merely for reading in the common schools, without note or comment by teachers, is not sectarian instruction, nor does such use of the Bible make the school house a house of religious worship.

"The judgment of the circuit judge, having been in accord herewith, is affirmed.

"CANTRILL, J., absent.

"NOTE—[In. Cent. Law Journal, vol. 61, 1, 55]. *The Weight of Opinion is to the Effect that the Reading of Portions of the Bible and Singing of Religious Songs at the Opening of a Public School is not in Violation of Article 1, Section 3, of the Bill of Rights, in Regard to the Establishment of Religion in Support of Worship by Taxation.*—Children are not required to be present at these exercises. For this reason, an injunction was refused, asking that such exercises be restrained. *Moore v. Monroe*, 64 Iowa, 367, 20 N. W. Rep. 475.

"In Massachusetts the school committee of a town have the legal power to pass a rule requiring the schools to be opened by reading the Bible and prayer every morning and that each child shall bow the head during the prayer, and that any scholar may be excused from bowing the head whose parents request it, and when any scholar refuses to obey the rule and his parents refuse to request that he be excused, the committee may exclude such scholar from the school.

"The reason for the rule is very clearly set forth in a recent Pennsylvania case entitled *Hysong v. Gallitzin Borough School*, 164 Pa. St., 629, which seems to us to carry the rule to the limit. A bill was filed to restrain the school directors of Gallitzin Borough School District, from permitting sectarian teaching in the common schools of the borough and from employing as teachers sisters or members of the order of St. Joseph, a religious society of the Roman Catholic Church. The court found that there was no evidence of any religious instruction or religious exercises of any character whatever during school hours. But the court found that after school hours the school room was used by the teachers in im-

parting Catholic religious instruction to children of Catholic parents, with the consent of or by the request of the parents. This the court enjoined, because it was a use of the school property for sectarian purposes after school hours.

“Of the eight teachers, six of them were sisters of a religious order of the Catholic Church, and while teaching wore the habit of the order. The learned judge of the court below says: ‘We conclude as to this branch of the case, that, in the absence of proof that religious sectarian instruction was imparted by them during school hours, or religious sectarian exercises engaged in, we can not restrain by injunction members of the order of St. Joseph from teaching in the public schools in the garb of their order nor the school directors from employing or permitting them to act in that capacity.’ Which language and conclusion the Supreme Court of Pennsylvania approved with the exception of Mr. Justice Williams who dissented in an able opinion, in the course of which, he stated that: ‘It is a school with eight departments and a separate teacher for each. The eight teachers are members of the same church or sect. This is unusual but not unlawful. Six of these teachers presiding over six of the departments are nuns of the sisterhood of St. Joseph. They have renounced the world, their own domestic relations and their family names. They have also renounced their property, their right to their own earnings, and the direction of their own lives, and bound themselves by solemn vows to the work of the church and obedience to ecclesiastical superiors. They have ceased to be civilians or secular persons. They have become ecclesiastical persons known by religious names and devoted to religious work.

“Among other methods by which their separation from the world is emphasized, and their renunciation of self and subjection to the church is proclaimed, is the adoption of a distinctly religious dress. This is strikingly unlike the dress of their sex whether Catholic or Protestant. Its use at all times and all places is obligatory. They are forbidden to modify it. Wherever they go, this garb proclaims the church, the order and their separation from the secular world as plainly as a herald could do if they were constantly attended by such a person.’

“The question presented on this state of facts is whether a school which is filled with religious or ecclesiastical persons as teachers, who come to the discharge of their duties, wearing their ecclesiastical robes, and hung about with the rosaries and other devices peculiar to their church and order is not necessarily dominated by sectarian influence and obnoxious to the spirit of our constitutional provisions and the school laws.

“In Wisconsin the reading of the Bible in public schools is regarded as unconstitutional and the withdrawal of a portion of the scholars during the time of the reading of the Bible was regarded as tending to destroy the equality and uniformity of treatment of the pupils sought to be established and protected by the Constitution, and the further reason given is, that each sect, with a few exceptions, bases its peculiar doctrine upon some portion of the Bible, the reading of which tends to inculcate those doctrines, therefore, the reading of the Bible is an act of worship and if allowed, the taxpayer would be supporting it.”

§ 93. [Board may make and enforce the rules for vaccination.] (§ 3986.) The board of each district may make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among the pupils attending or eligible to attend the schools of the districts, as in its own opinion the safety and interest of the public require; and the boards of health and councils of municipal corporations, and the trustees of townships, shall, on application of the board of education of the district, provide at the public expense, without delay, the means of vaccination to such pupils as are not provided therewith by their parents or guardians. (69 v. 22, § 1.)

Section 3986 is a valid enactment not repugnant to the Constitution of the State of Ohio, nor violative of the Fourteenth Amendment of the United States, and in the exercise of a sound discretion a Board of Education may exclude children not vaccinated from the schools, and the discretion of the board will not be interfered with unless it is shown clearly that it has been abused. *State, ex rel., v. Bd. Ed. Sup. Ct., May 7, 1907.*

SUCH LAWS CONSTITUTIONAL.—It has been seriously contended that it was not within the power of a state to pass a law compelling vaccination, that such laws are in derogation of the rights secured to all individuals by the preamble of the constitution of the United States and by the 14th amendment of the same, and especially of the clauses of that amendment, providing that no state shall make or enforce any law abridging the privileges and immunities of citizens of the United States, nor deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and further, that such laws are offered in the spirit of the United States Constitution.

All these objections were recently considered by the United States Supreme Court, in *Jacobson v. Mass.*, decided Feb. 20, 1905, the revised laws of that commonwealth provided “that the board of health of a city or town, if in its opinion

it is necessary for the public health or safety, shall require and enforce the vaccination and revaccination of all the inhabitants thereof, and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age, and not under guardianship, refuses or neglects to comply with such requirement shall forfeit \$5.00. Acting under the above law the city of Cambridge, adopted the following resolution.

Form of Resolution.

Whereas, smallpox has been prevalent to some extent in the city of Cambridge, and still continues to increase; and,

Whereas, it is necessary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and,

Whereas, in the opinion of the board of public health and safety, require the vaccination or revaccination of all the inhabitants of Cambridge, be it ordered that all the inhabitants who have not been successfully vaccinated since March 1, 1897, be vaccinated or revaccinated.

Afterwards the board adopted a resolution empowering a certain physician to enforce vaccination. Under these regulations and laws the plaintiff, Henning Jacobson, was arrested, charging him with having refused and neglected to comply with the same. He was convicted by the lower court, which was affirmed by the Supreme Court of Massachusetts, and then by the United States Supreme Court. In the opinion it is said "and the principle of vaccination as a means to prevent the spread of small-pox has been enforced in many of the states by statutes making the vaccination of children a condition of their right to enter or remain in public schools. *Blue v. Beach*, 135 Ind., 121, 50 L. R. A., 64, 80 Am. St. Rep., 195, 56 N. E., 89; *Norris v. Columbus*, 102 Ga., 792, 45 L. R. A., 175, 66 Am. St. Rep., 243, 30 S. E. 850; *State v. Hay*, 126 N. C., 999, 49 L. R. A., 588, 35 S. E., 459; *Abel v. Clark*, 84 Cal., 226, 24 Pac. 383; *Bissell v. Davisson*, 65 Conn., 183, 29 L. R. A., 251, 32 Atl., 348; *Hazen v. Strong*, 2 Vt.; *Duffield v. Williamsport*, 162 Pa. St., 476, 25 L. R. A., 152, 29 Atl., 742.

The latest case upon the subject of which we are aware is *Viemester v. White*, decided very recently by the court of appeals of New York. The case involved the validity of a statute excluding from the public schools all children who had not been vaccinated. One contention was that the statutes in question and the regulation adopted in exercise of its provisions was inconsistent with the rights, privileges and liberties of the citizen, the contention was overruled, the court saying, among other things, small-pox is known to all to be a dangerous and contagious disease. If vaccination strongly tends to prevent the transmission or spread of this disease, it logically follows that children may be refused admission to

the public schools until they have been vaccinated. The appellant claims that vaccination does not tend to prevent small-pox, but tends to bring about other diseases, and that it is much harm, with no good. It must be conceded that some laymen, both learned and untrained, and some physicians of great skill and repute, do not believe that vaccination is a preventive of small-pox. The common belief, however, is that it has a decided tendency to prevent the spread of this fearful disease, and to render it less dangerous to those who contract it. While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our state, and in most civilized nations for generations. It is generally applied in practice both by the voluntary action of the people, and in obedience to the command of the law. Nearly every state in the union has statutes to encourage, or directly or indirectly to require vaccination, and this is true of most nations of Europe.

A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts.

The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by every one. The possibility that the belief may be wrong, and that science may show it to be wrong, is not conclusive; for the legislature has the right to pass laws which, according to the common belief of the people, are adopted to prevent the spread of contagious diseases. In a free country, where government is by the people, through their chosen representatives, practical legislation admits of no other standard of action, for what the people believe is for the common welfare must be accepted as tending to promote the common welfare whether it does in fact or not. Any other basis would conflict with the spirit of the Constitution and would sanction measures offered to a republican form of government. While we do not decide, and can not decide, that vaccination is a representative of small-pox, we take judicial notice of the fact that this is the common belief of the people of the state, and with this fact as a foundation, we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power. (79 N. Y., 235, 72 N. E., 97.)

. . . further along the courts say: "We are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination, or by reason of his thin condition of health, would seriously impair his health, or probably cause

his death. No such case is presented. It is the cause of an adult, who for aught that appears is in perfect health," etc.

From the decision, then, it may be said that unless it can be shown that the person is not a fit subject of vaccination, that he is not physically or mentally able to stand it without seriously affecting his health. He must comply with the order of the health board and that the school board or health board are to use their discretion as to the time when the same can be done.

In an opinion by the city solicitor of Cincinnati to the board of education he says that "neither the board of education, the board of health nor the legislature itself could adopt an arbitrary, general continuing rule, operative without regard to varying conditions, excluding from the schools all pupils who have not been vaccinated. An epidemic must exist or be reasonably apprehended to authorize compulsory accumulation." (48 Bull., 292.)

I am not prepared to say that the board must wait until there is an epidemic or an apprehended epidemic of smallpox before they can make a rule, requiring vaccination as a requisite to attend schools. The New York case, quoted from by the United States court in the case above cited, held that a rule of that kind could be sustained, and nothing is said about an impending epidemic. I very much doubt if the board must wait until the evil is upon us before it can use measures to prevent its coming. And I am inclined to believe that a general continuing rule will be upheld. A number of cases are cited in 48 Bull., 293.

In England the Act of 1867 (30 and 31 Vict., Chap. 84) provided for compulsory vaccination, and has been enforced in various cases. It was held in *Reg. v. Justices of the Cinque Ports*, L. R., 17, Q. B. Div., 191, that where a parent had been duly summoned, and the court found that notice to the parent to procure the vaccination of the child had been disregarded, the justice might order the child to be vaccinated, although no appearance was made by either parent or child in answer to the summons.

See *Andrew J. Duffield, Appt., v. Williamsport School District*, 25 L. R. A., 152.

§ 94. [Display of U. S. Flag.] (§ 3986-1.) All boards of education be authorized and required to display the U. S. national flag upon all school houses under their control, during all day school sessions in fair weather, and to be displayed on the inside of the school house on all other days, and said boards of education shall make all rules and necessary regulations for the care and keeping of such flags, the expense of the

same to be paid out of the contingent funds of such boards. (92. v. 86.)

[**Terms of office of existing officers of boards of education, 1904.**] Sec. 3. All existing officers of boards of education and school councils shall hold their respective offices until boards of education are elected and organized under the provisions of this act; but no officer elected or appointed to fill a vacancy occurring in any such office shall be appointed to serve for a longer period than that ending on the 31st day of August, 1905. (97 v. 379.)

§ 94a. [**To prevent hazing in educational institutions, and to punish persons guilty thereof.**] Sec. 1. That section 1 of an act entitled "An act to provide against the offense of hazing in the colleges and other institutions in the state of Ohio, and for the punishment of crimes resulting therefrom," passed April 27, 1893, be amended, and supplemented by adding thereto section 1a, so as to read as follows:

Sec. 1. Whoever being a student or a person in attendance at any public, private, parochial, or military school, college or other educational institution conspires to or does engage in the practice of hazing or of committing any act that injures, frightens, degrades or disgraces or tends to injure, frighten, degrade or disgrace any fellow student or person attending such institution shall be held guilty of a misdemeanor, and shall be fined not more than two hundred dollars or imprisoned in the county jail not more than six months or both, and in case of fine the sentence shall be that the defendant or defendants be incarcerated until said fine shall be paid.

Sec. 1a. Whoever being a teacher, superintendent, commandant or other person or persons in charge of any public, private, parochial or military school, college or other educational institution shall knowingly permit an act of hazing or of attempting to haze, injure, frighten, degrade or disgrace any person attending the institution in which he is in charge shall be guilty of a misdemeanor and he shall be fined not more than one hundred dollars.

Sec. 2. The said section 1 of an act entitled "An act to provide against the offense of hazing in the colleges and other institutions in the state of Ohio, and the punishment of crimes resulting therefrom," be and the same is hereby repealed. (98 v. 124.)

CHAPTER 8.

SCHOOL HOUSES AND LIBRARIES.

SECTION.		SECTION.	
§ 95 (3987)	School houses.	§ 108 (3998-6)	School library.
§ 96 (3987-1)	Regulating use of school houses.	§ 109 (3998-7)	Museum.
§ 97 (3988)	Directions for bidding and for letting contracts.	§ 110 (3998-8)	Taking effect; existing law.
(3989)	Repealed.	§ 111 (3998-9)	City board of education may acquire private library; shall be made a public library; board of managers; vacancies in board.
§ 98 (3990)	When boards may appropriate property.	§ 112 (3998-10)	Powers and duties of managers.
§ 99 (3991)	Bond issue, vote on.	§ 113 (3998-11)	Organization of board; librarian and assistants.
§ 100 (3992)	Bond issue, when election favorable.	§ 114 (3998-12)	Tax levy; expenditure of funds.
§ 100a (2834a)	Refunding bonds.	§ 115 (3999)	In certain cities board may appoint managers of library; board of trustees in Cincinnati; how appointed; terms; vacancies.
§ 101 (3993)	Tax levy for bonds to be certified to county auditor.	§ 116 (3999a)	Residents of Hamilton county entitled to use of city library.
§ 102 (3994)	Bond issue without vote; limitations.	§ 117 (3999b)	Powers of trustees in Cincinnati; employment of librarian and assistants.
(3995)	Repealed.	§ 118 (3999c)	Tax for library purposes in Cincinnati.
(3996)	Repealed.	§ 119 (3999c-1)	Provisions relating to tax and expenditures for library purposes in Cincinnati.
(3997)	Repealed.	§ 120 (3999d)	Disposition of unexpended funds heretofore raised for library purposes in Cincinnati.
(3998)	Repealed.		
§ 103 (3998-1)	Boards of education authorized to provide for establishment, etc., of public library; taxation.		
§ 104 (3998-2)	Board of library trustees; how constituted; qualifications; term; vacancies; compensation; powers, etc.		
§ 105 (3998-3)	When library to be under control of such board		
§ 106 (3998-4)	Library fund; how provided and maintained; payments from.		
§ 107 (3998-5)	Board of education may contract with library association for use of library.		

SECTION.		SECTION.	
§ 121 (3999e)	Who ineligible as members of library board.	§ 142 (4002-11)	Bonds to pay for land and buildings.
§ 122 (3999f)	Carnegie donation; library trustees may accept.	§ 143 (4002-12)	Resolution to issue; sale of.
§ 123 (3999g)	Bonds for sites, equipment, etc., of libraries.	§ 144 (4002-13)	Sinking fund.
§ 124 (3999h)	Power of trustees to lease or purchase sites, etc., contracts for branch libraries; title to property.	§ 145 (4002-14)	Trustees of such sinking fund.
§ 125 (3999i)	Exemption from taxes, execution, etc.	§ 146 (4002-15)	Their organization.
§ 126 (3999j)	Donations, bequests, etc.	§ 147 (4002-16)	Their duty to certify tax.
§ 127 (3999k)	Powers of trustees to control funds, contract for buildings, etc.	§ 148 (4002-17)	Investments by.
§ 128 (3999l)	Officers of trustees; depository of funds, etc.	§ 149 (4002-18)	One-tenth of one mill may be appropriated in certain cities for maintaining public library; proviso.
§ 129 (4000)	Cleveland public library board.	§ 150 (4002-19)	Establishment of Toledo public library; tax for library fund.
§ 130 (4001)	Powers and duties of library board.	(4002-20)	Repealed.
§ 131 (4002)	Library tax and how expended.	§ 151 (4002-21)	Board of trustees.
§ 132 (4002-1)	Cleveland library board to hold title and control property.	§ 152 (4002-22)	Transfer of libraries to such board by the board of education.
§ 133 (4002-2)	Can purchase, lease or condemn.	§ 153 (4002-23)	Organization of trustees; regulations; powers; deposit of library funds; warrants; power to purchase or condemn grounds; issue and sale of public library building bonds; payment of said bonds and interest; title to grounds purchased; librarians and assistants.
§ 134 (4002-3)	Proceedings to condemn.	§ 154 (4002-24)	Additional bonds authorized to be issued for certain purposes.
§ 135 (4002-4)	Donations.	§ 155 (4002-25)	Purchase of site for library.
§ 136 (4002-5)	Exempt from tax and execution.	§ 156 (4002-26)	Appropriation of private property.
§ 137 (4002-6)	Oath.		
§ 138 (4002-7)	Organization.		
§ 139 (4002-8)	Annual report.		
§ 140 (4002-9)	No member of board to be interested in contract, except; validity of contract.		
§ 141 (4002-10)	Use of library and reading room.		

SECTION.		SECTION.	
§ 157 (4002-27)	Additional building bonds.	§ 172 (4002-42)	Who may use library.
§ 158 (4002-28)	Said library to be free, subject to reasonable rules.	§ 173 (4002-43)	Annual report.
§ 159 (4002-29)	Annual report to city council.	§ 174 (4002-44)	Donations.
§ 160 (4002-30)	Penalty for injuring library property.	§ 175 (4002-45)	Tax to assist existing library association.
§ 161 (4002-31)	Power of trustees to accept devises, donations, etc.	§ 176 (4002-46)	Library associations in certain cities; levy.
§ 162 (4002-32)	Dayton public library board; election of.	§ 177 (4002-47)	Disposition of tax.
§ 163 (4002-33)	Political composition of; terms; vote required to elect.	§ 178 (4002-48)	Association to render account; power to levy tax.
§ 164 (4002-34)	Powers and duties.	§ 179 (4002-49)	Tax in lieu of other taxes; purchase of school apparatus; levy.
§ 165 (4002-35)	Expenses of library for ensuing year.	§ 180 (4003)	Consolidation of libraries in Portsmouth authorized.
§ 166 (4002-36)	Tax for library fund; custodian; disbursements and balance.	§ 181 (4004)	Board of Portsmouth to appoint library committee.
§ 167 (4002-37)	Provisions governing board.	§ 182 (4005)	Powers and duties of such committee.
§ 168 (4002-38)	Museum may be established.	§ 183 (4006)	Powers and duties of library committees in Portsmouth.
§ 169 (4002-39)	Certain cities and villages may have library; tax.	§ 184	Sections 1 and 2 of an act to transfer library from municipality to school district.
§ 170 (4002-40)	Directors.	§ 184a	Sections 1, 2 and 3, trustees of township to levy tax, etc.
§ 171 (4002-41)	Organization, by-laws, etc.; control of expenditures; custody of building; how money drawn from treasury; librarian and assistants.		

For school house sites in certain villages and cities, see § 2233-1, R. S.

For public library in certain cities, see § 2680-19, R. S.

School house clocks, on—shall run by standard time, see § 4446-4, R. S.

Penalties for injuries to school property, see notes under § 3972 (§ 80), R. S. (§ 80).

Board of health authorized to inspect sanitary conditions and abate nuisances, see § 2128, R. S.

Transfer of funds, see § 52.

§ 95. [School houses.] (§ 3987.) The board of education of any district is empowered to build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or rent suitable school-rooms, provide all the necessary apparatus and make all other necessary provisions for the schools under its control; also, the boards shall provide fuel for schools, build and keep in good repair all fences inclosing such school houses, plant when deemed desirable shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts. (89 v. 95; 83 v. 84; 82 v. 86; Rev. Stat. 1880; 70 v. 195, § 55.)

Miscellaneous.

To Provide Egress.

Fence.

Directors Subordinate to Board.

Lease to School District.

Restriction as to Contract.

Application of Statute.

Certificate of Funds.

MISCELLANEOUS.—Inspection of school houses as to safety in case of accident or fire; sections 2568-2572a, R. S.

Courts of common pleas may authorize an exchange of school lots; sections 2675-1—2675-4, R. S.

County commissioners may act as board of education under certain circumstances; section 3969, (§ 70).

Rules regulating the erection of public buildings; sections 4238-1—4238-5, R. S.

Penalty for destroying plants or trees; section 6880, R. S.

Penalty for using school house without certificate of inspector; section 7010, R. S.

There is no conflict in sections 3987 (§ 95) and 3985, R. S. (§ 92). Section 3995, R. S., is not repealed by implication or otherwise, but in full force. (10 C. C., 294.)

The apparatus mentioned in section 3987 (§ 95) is the general furnishing necessary to properly equip a school so as to make it convenient and fit for general use for school purposes.

If either real or personal property be sold or bought, the resolution providing therefor must be passed as provided in section 3982, R. S. (§ 89), and it would be advisable to have a resolution to lease, pass in the same manner.

Section 3988, R. S. (§ 97), provides when purchases must be let to the lowest bidder.

Under the act of March 14, 1853, a township board of education has the power to designate the particular place where school houses in sub-districts shall be built; and the powers which, in this respect, the statute confers on the local directors

of a sub-district are to be exercised in subordination to the paramount authority of the township board of education. *Hughes v. Board of Ed. of ———*, 13 O. S., 396.

A school board is not liable as such for an injury to a pupil arising from negligence in the erection and maintenance of a public school building. *Finch v. Board of Ed.*, 30 O. S., 37.

See *Weir v. Day et al.*, 35 O. S., 143, under Sec. 3971 (§ 79).

A board of education will be enjoined in the exercise of its discretion where it attempts, without any valid reason or necessity, to expend the public funds for the erection of a new school house in another place in the district when the old one is suitable and satisfactory and located near the center of the district. (13 C. C., 258.)

TO PROVIDE CONVENIENT EGRESS.—The law requires under severe penalties to be visited on those who have control thereof, that “all school houses are to have ample means of convenient egress, and doors opening outward.” For requirements as to certificates regarding the safety of such buildings, and the penalties relating to neglect, see Revised Statutes, sections 2568, 2572 and 7010.

As to any building otherwise “in a condition dangerous to life or health,” see Revised Statutes, sections 2128 and 2466.

FENCE.—The board of education must build and keep in repair all fences enclosing school houses. This would seem to imply that the rule as to joint or partition fences, would not prevail as to adjoining owners of land. But the board of education must build and maintain not *half*, but *all*, the fence, enclosing the school house.

LOCAL DIRECTORS SUBORDINATE TO BOARD.—Where a township board has to sell the old site of a sub-district school house and has purchased a new site, and, notifying the local directors of the sub-district of their action in the premises, instructed them to sell the former and to build a new school house on the latter, and the local directors, disregarding such instructions, proceed to build a new school house on the old site, and keep up a school therein; *held*, that the local directors are guilty of such insubordination and neglect as to justify the township board in exercising the powers and duties which would otherwise devolve on the local directors, and in building a school house on the new site, and in employing a teacher therein; and such teacher is entitled to be paid his wages out of the township treasury, on the order of the township board. (*State v. Lynch*, 8 O. S., 34.)

Lease to School District.

Know All Men by These Presents:

That, of the county of, and state of, for the consideration herein mentioned, does hereby lease unto the board of education of the township of, county and state aforesaid, its successors and assigns, the following premises, to wit: [*Here insert description*], with all the privileges and appurtenances thereunto belonging; to have and to hold the same for and during the term of years from the day of, 19... And the said board of education, for itself and assigns, does covenant and agree to pay the said for the said premises the annual rent of dollars. [*Insert date and place of payment.*]

In witness whereof, the said parties hereunto set their hands this day of, 19..

.....,
Lessor.
.....,
President of the Board.
.....,
Clerk.

Signed, sealed and acknowledged in the presence of

.....,
.....,

State of Ohio,County, ss.:

Before me, a in and for said county, personally appeared, grantor in the above instrument, and acknowledged the same to be voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my seal, this day of, A. D. 19..

.....
(Title.)

If the lease be for more than three years, it must be acknowledged, attested by two witnesses and recorded. If for a less term, it need not be executed with these formalities. See section 4112 R. S. The consideration may be money or anything else, and the form varied accordingly. The above form is for a long lease.

[**Restrictions as to contracts, agreements, obligations, appropriations and expenditures.**] (§ 2834*b*.) The commissioners of any county, the trustees of any township and the board of education of any school district, except in cities of the first class, of first, second and third grades, shall enter into no contract, agreement or obligation involving the expenditure of money, nor shall any resolution or order for the appropriation or expenditure of money be passed by any board of county commissioners, township trustees or board of education, except in cities of the first class, of first, second and third grades, unless the auditor or clerk thereof shall first certify that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to

be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; which certificate shall be filed and immediately recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, except in cities of the first class, of first, second or third grades, is fully discharged from the contract, agreement or obligation, or so long as the order or resolution is in force, and all contracts, agreements or obligations, and all orders or resolutions entered into or passed contrary to the provisions of this section, shall be void. Provided, that none of the provisions of this section shall apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers and other school employes of boards of education. (93 v. 218.)

As to embezzlement, see § 266 (§ 6841 R. S.).

As to board of education, see § 82 (§ 3974 R. S.).

Application of Statute.

Certificate of Funds, etc.

APPLICATION OF STATUTE.—One of our circuit courts has recently held that the above section, by reason of the fact that certain districts are excepted from its operation, is not a statute of a uniform operation, while it is one of a general nature, and therefore is unconstitutional. (Bower v. Board of Education, 28 C. C., 624.)

But even if the same were not unconstitutional, the same case seems to hold that where money has been borrowed by a board of education on its note, for the purpose of meeting accruing indebtedness to be thereafter repaid out of the next taxes received, that the fact that there was no certificate filed as provided in the above section would not justify the court by injunction to prevent the board from paying such obligation. And especially is this true when the obligation for which the note was given was one arising for the payment of teachers, officers, etc., as such matters seem to be excepted from the above statute by the last clause of the same.

In reference to this section, it is stated that a county commissioner, who, without willfulness or a corrupt motive, but through ignorance, disregards the provisions of the statutes, he is not guilty of misconduct, etc., if the act be a valid one. (State v. Bair, 71 O. S., 410.)

Unless the certificate of the clerk of the board be filed, certifying that the money required, etc., is in the treasury, or has been levied, etc., the contract is void, and the board will be enjoined at the suit of a taxpayer (Stolts v. Selz, 12 Dec., 664), even though it be executed, etc. (State v. Board, 19 C. C., 627.)

Whether if the township board has received the benefit of the contract it could not make payment of the consideration is a question of some doubt. It is mandatory that this certificate be filed, and it is made a condition precedent to be complied with before the board can make a valid contract. It will be observed that an exception is made to teachers, officers and other employees of a board of education.

Certificate of Funds, etc.

To the Board of Education of School District:

I hereby certify that the money required for the payment of is in the treasury of this board, to the credit of (or state the fund from which it is drawn), has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose.

.....
Clerk of the Board of Education of School District.

This certificate must be recorded immediately.

§ 96. [Regulating use of school houses.] (§ 3987-1.) That when, in the judgment of any board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of such school houses for the purposes aforesaid. And the board of education of any school district shall have discretionary power to authorize the opening of such school houses for any other lawful purposes; provided, however, that nothing herein contained shall be construed to authorize any board of education to rent or lease any school house when such rental or lease shall in any wise interfere with the public schools in such district, or for any purpose other than such as is authorized by this act. (91 v. 44; 89 v. 147; 87 v. 240; 86 v. 11.)

COMMENTS.—This section is a little contradictory. In the first clause it specifies for what causes the board may allow the house to be used. Then in the second clause, it says they shall have discretionary power to allow it to be opened for any other lawful purpose, and then further along the limitation is placed on the board, that no such rental shall interfere with the schools or for any other purpose than authorized by this act. The probable meaning is that no such opening shall interfere with the public schools, literary societies, school exhibitions, singing schools, religious exercises, select or normal

schools. That is, it can be opened for any lawful purpose if it does not interfere with any of the above specified uses. Neither could it be allowed to be used for any purpose that would not be open equally to all persons of the district. (Wier v. Day, 35 O. S., 143.) It should not be opened for a purpose, the moral effect of which there is a difference of opinion among the residents of the district.

§ 97. [**Erection of school house.**] (§ 3988.) When a board of education determines to build, repair enlarge, or furnish a school house or school houses, or make any improvement or repair provided for in this chapter, the cost of which will exceed, in city districts, fifteen hundred dollars, and in other districts five hundred dollars, except in cases of urgent necessity, or for the security and protection of school property, it shall proceed as follows:

1. The board shall advertise for bids, for the period of four weeks, in some newspaper of general circulation in the district, and two such newspapers, if there are so many; and if no newspaper has a general circulation therein, then by posting such advertisements in three public places therein, which advertisements shall be entered in full by the clerk, on the record of the proceedings of the board.

2. The bids, duly sealed up, shall be filed with the clerk by twelve o'clock, noon, of the last day stated in the advertisement.

3. The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board.

4. Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid be accepted, a contract will be entered into and the performance of it properly secured.

5. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid with the price thereof.

6. None but the lowest responsible bid shall be accepted: but the board may, in its discretion, reject all the bids, or accept any bid for both labor and material which is the lowest in the aggregate for such improvement or repair.

7. Any part of a bid which is lower than the same part of any other bid shall be accepted, whether the residue of the bid is higher or not; and if it is higher, such residue shall be rejected.

8. The contract shall be between the board of education and the bidders; and the board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

9. When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between the makers thereof.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. (97 v. 334.)

Comments.

Board to Receive Bids.

Liability of Individual Members.

Must be Lowest Bid.

Advertisement for Bids.

Form of Contract.

Form of Bond.

Certificate of funds, see § 96.

COMMENTS.—It must appear that the clerk of the board, at the time the resolution was adopted, certified that there was money in the treasury to pay for it. (*Neubauer v. Union Tp.*, 6 N. P., 530.) See § 97.

It is never desirable or proper and it is questionable whether a board of education has the right, to build on property to which it has not acquired a clear title by lease, deed or process of law. In the latter case, either the time for appeal to a higher court should have elapsed, or the appeal, if made, shall have been decided. (*Ohio School Laws.*)

BOARDS TO RECEIVE BIDS.—Boards of education, and not local directors, are to receive bids. In a suit upon a contract under this statute, where the cost of the building exceeds \$500, city districts \$1500, it must appear from the records of the board that the contract was let after and upon such bids, or that it was a case of urgent necessity for the security of school property.

The record and proceedings of local directors, showing that they duly complied with the requirements of the law to advertise, are incompetent evidence, since local directors are not authorized to advertise, open bids and award the contract. If

such incompetent evidence in favor of the prevailing party is allowed to go to the jury against the objection of the other party, error to his prejudice will be presumed, without showing that the jury was influenced by it. (Error from District Court, Guernsey County, to Supreme Court, October 26, 1882.)

When the school house is to cost \$10,000 or over, see section 794, Revised Statutes.

“By the proviso to the 55th section of the school law (section 3988 [§ 97], R. S.), township boards of education are required, when the cost of building a school-house or other improvements exceeds five hundred dollars, to advertise, and let the same to the lowest responsible bidder, unless in case of urgent necessity, or for the security and protection of school property. This is a duty imposed on the board in its corporate capacity, and cannot be delegated to the local directors of the sub-district in which the school house, or other improvements is to be made.” (Board of Education v. Mills, 38 O. S., 383.)

The minute provisions, relating to the duties of the township board in letting such contracts, show that a personal term involving judgment and discretion is imposed on it as a corporate body, which cannot be delegated to the local directors.

A bid under this section which separately states the labor and material, with the price of each, and with the provision attached that it is to be accepted as a whole, does not comply with this section. (4 N. P., 44. The State of Ohio, The Bryce Furnace Company v. Board of Education and The Smead Furnace & Foundry Company.)

The discretion of a board as to what system of apparatus it will put in can not be controlled either by *mandamus* or injunction. Such bids are not competitive. (State ex rel. Bryce Furnace Company v. The Board of Education of Toledo, 14 C. C., 15.)

In order that one who has bid on public work can maintain an action of *mandamus*, he must show that he is the one with whom the contract should be made, regardless of anybody's else rights. (State ex rel. Bryce Furnace Company v. The Board of Education of Toledo, 14 C. C., 19.)

A bid on heating and ventilating apparatus need not separately state the cost of labor and materials entering into the same. (*Id.* 23.)

When an advertisement for bids for public work is required, the board may reject them. (State ex. rel. Black v. Board of Education, 13 C. C., 603.)

When an advertisement is not necessary, the board may make such stipulations as it desires. (*Id.*)

LIABILITY OF INDIVIDUAL MEMBERS.—Individual members of a board, and local directors, as mere agents of the board, must

see that their acts bind the board; for if they do not secure their principal a right of action or defense, they will themselves be personally liable. (*Ives v. Hulet*, 12 Vt., 314; 58 Mo., 245.) This principal also applies to the acts of board of education who, in their corporate capacity, seek to bind the district for which they act, as also their successors.

But those who deal with officers of a corporation must ascertain, at their peril, what they will be conclusively presumed to know, that these public agents are strictly within the sphere limited and prescribed by law, and outside of which they are powerless to act. (60 Mo., 53; *Whiteside v. U. S.*, 93 U. S., 247; *Story on Agency*, § 307, 9th ed.)

Still, it is well settled that where persons deal with an officer of a corporation, who assumes authority to act in the premises, and no want of authority or irregularity is brought to the knowledge of the party so dealing with the corporation, and there is nothing to excite suspicion of such defect, the corporation is bound, although the agent exceeded his powers. (57 Mo., 207; *Whiteside v. U. S.*, 93 U. S., 247.)

WHEN UNAUTHORIZED EXPENDITURES MAY BE RATIFIED.—Unauthorized expenditures, not *ultra vires*, deemed beneficial, may be ratified, and in such case this ratification is equivalent to previous authority. (8 Fost. (N. H.), 65; 32 N. H., 118.) But the subsequent use, in the school, of materials unlawfully contracted for does not amount to such a ratification as will bind the district. (67 Mo., 319.)

Ratification of the acts of a committee in building upon the land of a district a more expensive house than they were authorized to do by vote of the corporation, cannot be inferred from the mere fact that the school is kept in it for a few weeks, there being no evidence that the corporation had knowledge of the over-expenditure, or had taken any action on the subject. (*Dillon on Mun. Corp.*, 480.) This will probably apply to the case of local directors acting as agents of the board of education in building a house. It is evident from the above that in order to bind their principals the agents must describe themselves as agents of such principals, and their business must be of the kind to which the duties and powers of the principal pertain, and must not be acts prohibited as either criminal or against public policy.

All contracts made by the board or its agents should be in writing and in duplicate, and one copy should be filed with the clerk of the board. The laws of some states require this. This is not, however, necessary to make a contract binding.

MUST BE THE LOWEST RESPONSIBLE BID.—Clause 6, of Revised Statutes, which provides that a board of education engaged in the erection of a school building “may, in its discre-

tion, reject all the bids," does not authorize the acceptance of any "but the lowest responsible bid."

The board may waive defects in the form of the bid, where such waiver works no prejudice to the rights of the public for whom the board acts.

When a bid is uncertain as to whether it is for parts of a job as well as for the whole, and the bidder induces the board to construe it as for all or none, such bidder can not afterwards complain that the board awarded the whole job to a lower bidder, although under a different construction the board would have been bound to award to such bidder a portion of the work. (*Ross v. Board of Education*, 42 O. S., 375.)

The discretion given by this clause is to reject all the bids. This is the only discretion given. If it is determined to accept a bid, there is no discretion as to which bid must be accepted. If the lowest responsible bid be rejected, and any other be accepted, the action of the board may be controlled by *mandamus*, without violating the rule that a matter of discretion is not subject to control by proceedings in *mandamus*. (*Ross v. Board of Education*, 42 O. S., 378.)

The bids should be accepted upon a called aye and nay vote as required by section 3982 R. S. (§ 89).

Form of Advertisement for Bids.

To Whom it May Concern:

Notice is hereby given that until the day of, 190..., at o'clock, sealed proposals will be received at the office of the clerk of the board of education of township, for building a school house on the lot situate; and according to the plans and specifications on file in the clerk's office.

Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid is accepted a contract will be entered into, and the performance of it properly secured. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid, with the price thereof.

None but the lowest responsible bid will be accepted, and the board reserves the right to *reject all the bids*, or accept any bid for both labor and material which is the lowest in the aggregate.

By order of the board of education.

.....,
Clerk of

If there is a newspaper of general circulation within the district, this notice must be printed therein for four consecutive weeks, and if there are two newspapers therein, it must be printed in both that length of time. If there are no such newspapers, it must be posted up in three public places in such district. Copies of such notice and all matters connected therewith must be entered upon the journal of the clerk's record of the proceedings of the board.

Form of Contract, etc.

*Articles of Agreement By and Between the Board of Education of
....., Party of the First Part, and , Party of the Second
Part:*

Witnesseth, that the said party of the second part, for the consideration hereinafter named, does agree and contract with the said party of the first part to furnish the labor and all materials necessary to build and construct a school house on a lot situated, and according to the plans and specifications hereto attached and made a part hereof.

All work to be done in a good workmanlike manner, and all materials to be of good and sound quality and to the satisfaction of (architect, etc.), all of which work is to be done under his direction, and to be completed by and ready for use at that time.

And for and in consideration of the building of said school house in accordance with this contract and for the work therefor and the materials therein the said party of the first part hereby agrees to pay to the said party of the second part, the following compensation, to wit:

For..... (here insert each kind of labor, etc., as designated in the For..... bid accepted.)

For.....

Such compensation to be paid in installments upon estimates made by the architect (or other person in charge) of the amount of work completed, always reserving per cent. until the entire job is completed and accepted, when the balance is to be paid.

No extra work shall be paid for unless the same shall be contracted for in writing, nor shall any alterations or changes be made therein unless made in writing.

In witness whereof, we have hereunto set our hands this day of, 190..

.....,
.....,
President and Clerk of Board of Education.
.....,
Contractor.

Form of Bond.

Know All Men by These Presents:

That, principal, and, sureties, are held and firmly bound unto the board of education of township, in the penal sum of dollars, the payment of which we bind ourselves, our heirs, executors and administrators.

The condition of the above obligation is such that whereas the said did on the day of, 190.., enter into a written contract for the erection of a certain school house for the board of education of township with the said board.

Now if the said shall well and truly perform all the conditions of said contract on his part to be performed, then this obligation shall be void, otherwise to be in full force and virtue.

Witness our hands this day of, 190..

Attest:

.....
.....
.....

[Erection of school houses in joint sub-district.] (§ 3989.)

Repealed.

§ 98. [When boards may appropriate property.] (§ 3990.)

When it is necessary to procure or enlarge a school-house site, and the board of education and the owner of the proposed site or addition are unable, from any cause, to agree upon the sale and purchase thereof, the board shall make an accurate plat and description of the parcel of land which it desires for such purpose, and file the same with the probate judge of the proper county; and thereupon the same proceedings of appropriation shall be had which are provided for the appropriation of private property by municipal corporations. (70 v. 195, § 65.)

Comments.

Form of Resolution.

Resolution to Appropriate.

Section 2232 *et seq.* of the Revised Statutes, refer to this subject.

Before building on such property, it is best to complete the proceedings before the court or courts, if an appeal is taken, and to wait until the time for appeal has elapsed, as such appeal may be taken and may reverse the proceedings below.

The power to condemn private property to public uses against the will of the owner is a stringent one, based on public necessity or urgent public policy, the rule requiring the power to be strictly construed, and the prescribed mode for its exercise strictly followed, is a just one, and should, within all reasonable limits, be inflexibly adhered to. (Dillon on Mun. Corp., 569.)

The owner is entitled to a full payment of the damages assessed before his title is extinguished or his control of the premises ceases. In any case of voluntary dedication or of involuntary surrender of property to a public use, the property reverts to the owner when the use entirely ceases.

RESOLUTION TO APPROPRIATE.—The board having determined that a certain piece of ground is necessary, and having endeavored to purchase the same and failed to get the same, a resolution should be passed. It may be in the following form.

Form of Resolution.

Whereas, it is necessary to procure a site (or enlarge one already acquired) for the purpose of erecting a school building thereon; and,

Whereas, the following described real estate, to wit:

..... is determined upon and found necessary by this board as a proper and suitable site upon which to erect said building; and,

Whereas, this board has been and is unable to agree with the owner of the same upon the price and sale and purchase of the same; therefore,

Be it resolved by the board of education of school district, county, Ohio, that the necessary proceedings be had to appropriate the same as provided by law; that an accurate plat and description of said premises be made, and the same, with a copy of this resolution, be filed with the probate judge of county, Ohio, and that the president and clerk of this board are authorized and directed to take charge of said proceedings on behalf of this board and procure such legal services as may be needed to conduct the same to a successful termination.

I presume there should be a certificate on file from the clerk that there are sufficient funds to meet the appropriation as required by section 2834*b* (§ 95*a*).

The board may call on the prosecuting attorney to attend to the matter, or may employ other counsel (section 3977 (§ 85) as to the method to be pursued in probate court. See Rockel's Probate Law and Practice section 1751 *et seq.*

§ 99. [**Bond issue, vote on.**] (§ 3991.) When the board of education of any school district determines that it is necessary for the proper accommodation of the schools of such district to purchase a site or sites to erect a school house or houses, to complete a partially built school house, to enlarge, repair or furnish a school house, or to do any or all of said things, and that the funds at the disposal of said board or that can be raised under the provisions of section 3994 (§ 102) of the Revised Statutes of Ohio, are not sufficient to accomplish said purpose and that a bond issue is necessary, the board shall make an estimate of the probable amount of money required for such purpose or purposes and at a general election or a special election called for that purpose, shall submit to the electors of the district the question of the issuing of bonds for the amount so estimated; notices of the election required herein shall be given in the manner as provided in section *thirty-nine hundred and seventy dash eleven* (§ 77). (97 v. 334.)

Board Must Officially Determine.
Resolutions in Bond Issue.

Notice—What must contain.
Form of Notice for Election.
Form of Ballot.

BOARD MUST OFFICIALLY DETERMINE UPON MATTER.—It can not be too often repeated that a board of education speaks only through its records. Its acts, findings and determina-

tions are only known by its records. Hence, although the words of the statute may not clearly settle the question, yet it is safest to assume that this *determination* is to be an *official* determination. Purchasers of bonds are likely to scrutinize such matters closely, and they will question whether the board acquired jurisdiction to take steps for raising a tax unless it first officially "ascertains" and "determines" all the preliminary facts mentioned in the statute, and makes a record of such finding.

Resolutions on Bond Issue.

Resolved by the board of education of school district, county, Ohio, that it is necessary for the proper accommodation of the schools of said district that [*state nature of improvement*]; that it will require \$..... to make said improvement; that the funds at the disposal of said board or that can be raised under the provisions of section 3994 of the Revised Statutes of Ohio, are not sufficient to accomplish said purpose, and that a bond issue is necessary, it is therefore further

Resolved, that an election be held in said school district on the question of the issuing of bonds in the sum of \$..... for the purpose herein specified, on the day of, 190., and that the clerk of the board be directed to forward a copy of these resolutions to the deputy state supervisors of elections, and request said supervisors to provide election supplies and conduct said election, and that the clerk be also directed to publish the notices of said election as provided by law.

NOTICE MUST CONTAIN MATTER TO BE ACTED ON.—When the statute requires that notice shall be given of the matter to be acted on, a failure to insert such matter will render void any act done with respect to the matter not so embraced as required. (18 Me., 184; 12 Cush., 294.) It is presumed that the people of a district know the days appointed by law for the ordinary affairs of the district, yet if it is intended to proceed to any other act of importance a notice is necessary, the same as at any other time. (Dillon on Mun. Corp., 319.)

Notice of Election for Bond Issue.

Notice is hereby given by the board of education of school district, county, Ohio, that there will be an election held in said district at the usual voting place [*places*], between the hours of 5:30 A. M. and 5:30 P. M. on the day of, 190., to consider the question of a bond issue in the sum of \$....., for the purpose of [*here state purpose*] as provided in section 3991 of the Revised Statutes of Ohio.

By order of the board of education.

....., Clerk.

....., Ohio.

....., 190..

Form of Ballot.

	For Bond Issue in the Sum of \$....., Yes.
	For Bond Issue in the Sum of \$....., No.

As to how notice shall be given, see § 77.

All elections on school questions should be held under the supervision of the regular election officers, and the ballots be made to conform to the provisions of the general election laws.

§ 100. [**Bond issue, when election favorable.**] (§ 3992.) If a majority of the electors, voting on the proposition to issue bonds, shall vote in favor of said issue, the board shall be thereby authorized to issue bonds for the amount indicated by the vote provided for in section *thirty-nine hundred and ninety-one* (§ 99), the issue and sale of said bonds to be provided for by a resolution fixing the amount of each bond, the length of time they shall run, the rate of interest they shall bear, and the time of sale which may be by competitive bidding at the discretion of the board; the bonds shall bear a rate of interest not to exceed six per cent. per annum payable semi-annually, shall be made payable within at least forty years from the date thereof, be numbered consecutively, made payable to the bearer, bear date of the day of sale and be signed by the president and clerk of the board of education; the clerk of the board shall keep a record of the number, date, amount, and the rate of interest of each bond sold, the amount received for the same, the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times; and the bonds so issued shall in no case be sold for a less sum than their par value, nor bear interest until the purchase money for the same shall have been paid by the purchaser. (97 v. 357.)

- | | |
|-------------------------------------|-----------------------|
| Certificate as to Vote. | Notice of sale. |
| Resolution to Issue and Sell Bonds. | Form of Notice. |
| Form of Resolution. | Form of Bond. |
| Sale of Bond. | Form of Coupon. |
| | Payment of Bond, etc. |

CERTIFICATE AS TO VOTE.—The board of election should file with the school board a certificate of the result of election upon the bond proposition, which might be in the following form:

We, the undersigned, president and secretary of the board of elections of county, hereby certify that at the general election held on the day of, there were number of votes cast in favor of the proposition to issue bonds for the purpose of, and there were number of votes cast against the issue of said bonds for said purpose, and we hereby certify that a majority of the electors voting on said proposition have voted in favor of said bond issue.

.....

This certificate should be copied into the records of the board of education.

RESOLUTION TO ISSUE AND SELL BONDS.—As soon as the certificate has been filed that the proposition has carried, then the board should pass a resolution fixing the amount of each bond, the length of time they were to run, the rate of interest they should bear and the time of sale. This sale may be by competitive bidding at the discretion of the board. The bonds shall bear a rate of interest not exceeding six per cent. and shall be made payable at least within forty years from the date.

This resolution may be in the following form:

Form of Resolution.

Whereas, the proposition to issue bonds for purposes was submitted to the voters of school district, and at the election held on the day of, and,

Whereas, the board of elections of county has certified to this board of education that a majority of the electors voting on said proposition have voted in favor thereof,

Therefore be it resolved, by the board of education of school district, that there be issued bonds not to exceed the sum of \$..... That said bonds should be in the amount of \$..... each, and shall run for years from the date thereof, and shall bear interest at the rate of

Said interest to be payable, the same to be fixed by coupons attached to each bond.

Be it further resolved, that said bonds shall be sold on the day of, at, to the highest bidder. No bid to be received for less than the face value of said bonds.

Resolved, further, that the clerk of this board shall give notice of the time and place where said bids may be received in and in, two newspapers of opposite politics, having a general circulation in the county in which the school district is located.

SALE OF BOND.—Section 22*b* of the Revised Statutes directs the method of such sale, and it is as follows:

§ 226. All bonds issued by boards of county commissioners, boards of education, commissioners of free turnpikes, shall be sold to the highest bidder after being advertised three times, weekly, in a newspaper having a general circulation in the county where the bonds are issued; and if the amount of bonds to be sold exceeds twenty thousand dollars, then in an additional newspaper having a general circulation in the state, three times, weekly. The advertisement shall state the total amount of bonds to be sold, the amount of each bond, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing their issue, the day, hour and place in the county where they are to be sold. None of said bonds shall be sold for less than the face thereof, with any interest that may have accrued thereon; and the privilege shall be reserved of rejecting all or any bids, and if said bids are rejected said bond shall again be advertised; all moneys arising from premiums on the sale of said bonds as well as the principal, shall be credited to the fund on account of which the bonds are issued and sold. (80 v. 68.)

NOTICE OF SALE.—The above section quoted from the Revised Statutes is very specific in the method to be followed in the sale of such bonds. It will be observed that they are to be sold to the highest bidder, but the privilege is reserved of rejecting all or any bids that the board sees fit. Likewise there is no statement as to politics of the newspapers in which the notice is to be given, and if the bids do not exceed \$20,000, then notice need not be given in more than one paper.

This notice must be inserted for three weeks, once each week.

Form of Notice.

Notice is hereby given that on the day of, at o'clock .. M., at the office of, situate in the city of, county of, Ohio, the board of education of school district will sell to the highest bidder bonds of the value of the sum of \$..... Said bonds are issued in the sum of \$..... each, and run for the period of years and draw interest at the rate of per cent., payable annually (or semi-annually). That none of said bonds shall be sold for less than the face value thereof, with any interest that may have accrued thereon, and the board reserves the privilege of rejecting any or all bids. That said bonds are issued by virtue of the provisions of section of the Revised Statutes of Ohio.

.....,
Clerk of Board of Education.

Form of Bond.

UNITED STATES OF AMERICA.

No.

STATE OF OHIO.

Board of Education of the City of Springfield:

Know all men by these presents, that the board of education of school district, state of Ohio, acknowledges itself to owe, and for value hereby promises to pay to the bearer the sum of \$...... in lawful money of the United States of America, on the day of, with interest thereon at the rate of per cent. per annum, payable semi-annually upon presentation of the respective interest coupons therefor, hereto attached. Both the principal and interest hereof are payable at the office of the treasurer of such school district at

This bond is issued under authority of sections 3991 and 3992 of the Revised Statutes of Ohio, and in accordance with the resolution of the board of education of said school district, passed on the day of

It is hereby certified and recited that all acts, conditions and things acquired by law precedent to and in the issuance of this bond have happened and been performed in regular and due form; and in full faith, credit and revenue of all the property, real and personal, situate in said school district of, the state of Ohio, have irrevocably pledged for the prompt payment of this bond and interest as the same mature; and that this issue, together with all other indebtedness of the said board of education of said school district does not exceed any statutory limitation of indebtedness.

In witness whereof, the board of education of the school district has caused this bond to be signed by its president and countersigned by its secretary this day of

.....
President of Board.

Countersigned:

.....
Clerk of Board.

Form of Coupon.

On the first day of the board of education of school district, Ohio, promises to pay to bearer dollars, at the office of the treasurer of said school district, situate in, Ohio, being interest due that day on its per cent. of bond issue for building school houses, dated

No.

.....
President.

Coupon No.

.....
Clerk.

PAYMENT OF BONDS, ETC.—*Mandamus* is the proper remedy to compel the board to appropriate moneys already in their treasury for that purpose, toward the payment of such bonds, and to levy such tax as may be necessary to complete such payment. (State ex rel Robertson v. Board of Education of Perrysburg, 27 O. S., 96.)

A board of education agreed to borrow a sum of money at an aggregate rate of interest of fifteen per cent., in manner following: For the amount so to be borrowed, bonds were to be issued bearing the authorized rate of interest, and for the excess of interest, orders on the treasury were to be issued, payable at the same time as the legal interest. The bonds were regularly issued, bearing eight per cent. interest, and sold at par, and the money was received and used as authorized. For the excess of interest, orders on the treasury were at the same time issued and delivered to the purchaser, as agreed to by the parties, but were never presented for payment, and after their maturity, he offered to return them for cancellation; *Held*, that this agreement to pay excess of interest is void, and, having never been executed in whole or in part, will not avoid a recovery on the bonds. (Ohio ex rel. Laskey et al. v. Board of Education of Perrysburg, 35 O. S., 519.)

Certain bonds were issued by a board of education; they were afterwards redeemed before maturity, and placed in the hands of the treasurer for destruction. The treasurer failed to destroy them, but fraudulently used them as collateral security for an individual loan by an innocent third person; *Held*, that the board was not liable for the payment of the same. (Board of Education v. Sinton, 41 O. S., 504.)

§ 100a. [**Refunding of bonds.**] (§ 2834a.) The trustees of any township, the board of education of any school district and the commissioners of any county for the purpose of extending the time of payment of any indebtedness, which from its limits of taxation such township, school district or county is unable to pay at maturity, shall have power to borrow money or to issue bonds of such township, school district or county, so as to change but not to increase the indebtedness in such amounts and for such length of time and at such rate of interest, as the trustees, board of education or commissioners may deem proper, not to exceed the rate of six per centum per annum, payable annually or semi-annually.

Or when it shall appear to the trustees, board of education or commissioners of any township, school district or county to be for the best interests of such township, school district or county to renew, refund or extend the time of payment of any bonded indebtedness which shall not have matured and thereby reduce the rate of interest thereon, such trustees, board of education or commissioners shall have authority to issue

for that purpose new bonds, and to exchange the same with the holder or holders of such outstanding bonds if such holder or holders shall consent to make such exchange and to such reduction of interest.

Provided, however, that no indebtedness of any township, school district or county shall be funded, refunded or extended unless such indebtedness shall first be determined to be an existing, valid and binding obligation of any such township, school district or county by a formal resolution of the trustees, board of education or commissioners of any such township, school district or county, which resolution shall so state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear and the place of payment of principal and interest. And for the payment of the bonds issued under this section the township trustees, board of education or county commissioners shall levy a tax, in addition to the amount otherwise authorized, every year during the period the bonds have to run sufficient in amount to pay the accruing interest and the bonds as they mature. (97 v. 514.)

See § 52 (§ 22b-2), as to transfer of funds.

Proceedings for, etc.

Form of Resolution.

Resolution of Board, etc.

Resolution for Exchange.

PROCEEDINGS FOR, ETC.—It will be observed by the above section that when a school board is unable to pay at maturity outstanding bonds, they shall have power to issue new bonds and extend the time of payment, and the board may refund its indebtedness, although the time of payment is not due, but it seems before they are authorized to refund an indebtedness that is not due they must do so with the result that the interest charge is reduced. In either case the indebtedness must not be increased. No limitation of time is made as to how long the extended bond shall run, but it is safe to presume that it ought to run a longer time than an original issue could run, which is forty years. And if the debt is refunded before it is due, it seems that the new bond may be exchanged with holders of the old bonds without respect to whether or not such holders of the old bond are willing to pay the highest price therefor. Such matter is left in the discretion of the board, but if a new bond is to be issued, then I have no

doubt it should be sold in the same manner as other bonds are sold.

RESOLUTION OF BOARD, ETC.—The statute is very positive upon another question, and that is, that before any such debt shall be refunded, the board of education must state in a resolution the amount of the existing indebtedness to be refunded, the aggregate amount of bonds to be issued, etc., their number and denomination, the date of maturity, the rate of interest they should bear, place of payment, principal and interest. In all respects, the statute must be strictly followed. I am not sure that an aye and nay vote should be called upon such a question, but it had better be done and the record should show all these facts.

It might be in the following form:

Form of Resolution.

Whereas, there are outstanding bonds against this board of education issued on the day of, for the sum of \$....., which are a valid and binding obligation against this board of education; that said bonds will mature on the day of; therefore,

Be it resolved, that as this board of education is unable to pay said bonds, at their maturity, it is therefore further resolved that there be issued bonds in the sum of \$....., not to exceed the value of those becoming due as aforesaid; that there shall be issued number of such bonds of the face value each and that the same shall run for the period of years, and shall bear interest at the rate of per cent. and shall be payable, both principal and interest, at, and,

It is further ordered that said bonds be offered for sale to the highest bidder at, on the day of, at o'clock, and that the clerk give notice thereof as provided by law.

Resolution for Exchange.

Whereas, there are outstanding bonds against this board of education issued on the day of, for the sum of \$....., which are a valid and binding obligation against this board of education that such bonds will mature on the day of

Whereas, it is deemed expedient for the benefit of this board of education that said bonds be refunded; therefore,

Be it resolved, that there be issued bonds in the sum of \$....., not to exceed the value of those becoming due as aforesaid, and that there shall be issued number of said bonds of the face value each; that the same shall run for the period of years and shall bear interest at the rate of per cent., payable, and both principal and interest shall be payable at the, and

It is further ordered that said bonds so issued be exchanged with the holders of the present said outstanding bonds, the holders of said bonds assenting thereto and agreeing to accept said new bonds in exchange for the old bonds, the exchange being made in bonds of equal face value, this board paying the accrued interest on the old bond and the holder of said old bond in exchange accounting for the accrued interest on the new bond from the date of its issue.

§ 101. [Tax levy for bonds to be certified to county auditor.] (§ 3993.) When an issue of bonds has been provided for under sections *thirty-nine hundred and ninety-one* (§ 99) and *thirty-nine hundred and ninety-two* (§ 100) the board of education shall certify annually, to the county auditor or auditors as the case may require, a tax levy sufficient to pay said bonded indebtedness as the same shall fall due together with accrued interest thereon; the county auditor or auditors shall place said levy on the tax duplicate and it shall be collected and paid to the board of education in the same manner as other taxes are collected and paid. The tax levy provided for herein shall be in addition to the tax levy provided shall be kept in a separate fund by the board of education and applied only to the payment of the bonds and interest for which it was levied. (97 v. 358.)

§ 102. [Bond issue without vote; limitations.] (§ 3994.) The board of education of any school district may issue bonds to obtain or improve public school property, and in anticipation of income from taxes, for such purposes, levied or to be levied, may, from time to time, as occasion requires, issue and sell bonds, under the restrictions and bearing a rate of interest specified in section *thirty-nine hundred and ninety-two* (§ 100) and shall pay such bonds and the interest thereon when due, but shall provide that no greater amount of such bonds shall be issued in any year than would equal the aggregate of a tax at the rate of two mills, for the year next preceding such issue, but the order to issue bonds shall be made only at a regular meeting of the board and by a vote of two-thirds of the full membership of the board, taken by yeas and nays and entered upon the journal of the board; but in no case shall a board of education issue bonds under the provisions of this section in a greater amount than can be provided for and paid with the tax levy provided for under section *thirty-nine hundred and fifty-nine* (§ 100) of the Revised Statutes of Ohio, and paid within forty years after the bond issue on the basis of the tax valuation at the time of the bond issue. (97 v. 334.)

Sec. 3995. Repealed April 25, 1904.

Sec. 3996. Repealed April 25, 1904.

Sec. 3997. Repealed April 25, 1904.

Sec. 3998. Repealed April 25, 1904.

§ 103. [**Board of education authorized to provide for establishment, etc., of public library.**] (§ 3998-1.) The board of education of any city, village, township, or special school district, may, by resolution provide for the establishment, control and maintenance, in such school district, of a public library, free to all the inhabitants of such district; and, for that purpose, may acquire, by purchase, the necessary real property, and erect thereon a library building; it may acquire from any other library association, by purchase or otherwise, its library property; it may receive donations and bequests of money or property for such library purposes, and it may maintain and support libraries now in existence and controlled by the board of education,

[**Taxation.**] and such board of education may annually make a levy upon the taxable property of such school district, in addition to all other taxes allowed by law, of not to exceed one mill for a library fund, to be expended by such board of education, for the establishment, support and maintenance of such public library;

[**Extension of provisions of this act to libraries jointly owned by two or more school districts.**] Provided, that whenever any donation or bequest of money or property has been or shall hereafter be made to any two or more school districts jointly, or jointly and severally for the purpose of establishing and maintaining such public library, and the money so donated has been or may hereafter be expended in the purchase of a site and the erection of a library building thereon, the provisions of this act shall apply;

[**Taxation.**] and provided in such case the board of education of each of said districts may annually make a levy of not exceeding one mill, in addition to all other taxes allowed by law, upon the taxable property of such school districts for the establishment, support and maintenance of such public library, and the library building may be located at a convenient place in either of such school districts.

[**Board of trustees, appointment, term, etc.**] The control of such building and library and the expenditure of all moneys for the purchase of books and other purposes and the administration of such library will be vested in a board of six trustees, three to be appointed by each of said boards of education for the term of five years, and who shall serve

without compensation, and such trustees shall serve until their successors are appointed. In case of vacancy in such board, from refusal to serve, resignation or otherwise, said vacancy shall be filled by the said boards of education of said district, in case such vacancy occurs, for the unexpired term. (98 v. 244.)

§ 104. [Board of library trustees; how constituted; qualifications; terms; vacancies; compensation; powers.]

(§ 3998-2.) The board of education may provide for the management and control of such library by a board of trustees to be elected by said board of education as herein provided. Such board of library trustees shall consist of seven members, who shall be residents of the school district, and no one shall be eligible to membership on said library board who is or has been for a year previous to his election, a member or officer of the board of education. The term of office shall be seven years, except that at the first election the terms shall be such that one member shall retire each year. Should a vacancy occur in said board, it shall be filled by the board of education for the unexpired term. The members of said library board shall serve without compensation and until their successors are elected and qualified. Such library board in its own name shall hold the title to and have the custody, management and control of all libraries, branches, stations, reading rooms, and of all library property, real and personal, of such school district, and the expenditure of all moneys collected or received from any source for library purposes for such district. It shall have power to employ a librarian and assistants, but previous to such employment the compensation of such librarian and assistants shall be fixed. Such library board shall have the power, by a two-thirds vote of its members, to purchase or lease grounds and buildings, and erect buildings for library purposes. It may accept any gift, devise or bequest for the benefit of such library. No member of the library board shall be interested, directly or indirectly, in any contract made by the board. The library board shall report annually in writing to the board of education. (96 v. 8.)

§ 105. [When library to be under control of such board.]

(§ 3998-3.) Whenever in any city, village or special school district a library established or controlled by a board of education shall contain twenty-five thousand or more volumes, it

shall be managed, governed and controlled by a board of trustees elected by the board of education as provided in section 2 of this act. (96 v. 9.)

§ 106. [**Library fund; how provided and maintained; payments from.**] (§ 3998-4.) Said board of library trustees shall annually, during the month of May, certify to the board of education the amount of money that will be needed for increasing, maintaining and operating said library during the ensuing year in addition to the funds available therefor from other sources; and such board of education shall annually levy on each dollar of taxable property within said school district, in addition to other levies authorized by law, such assessment not exceeding one mill, as shall be necessary to realize the sum so certified, the same to be placed on the tax duplicate and collected as other taxes. The proceeds of the said tax shall constitute a fund to be known and designated as the library fund: Payments therefrom shall only be made upon the warrant of the board of trustees of the library, signed by the president and secretary thereof. (96 v. 9.)

§ 107. [**Board of education may contract with library association for use of library.**] (§ 3998-5.) The board of education in any city, village or special school district shall have power to contract annually with any library corporation or other organization owning and maintaining a library, for the use of such library, by the residents of such districts, and it shall have power to levy annually a tax not exceeding one mill on the taxable property of such district to pay for the same; and such board of education shall require an annual report in writing from such library corporation or other organization. (96 v. 9.)

§ 108. [**School library.**] (§ 3998-6.) The board of education of any school district of the state, in which there is not a public library operated under public authority and free to all the residents of such district, may appropriate annually not to exceed two hundred and fifty dollars annually from its contingent fund for the purchase of books, other than school books, for the use and improvement of the buildings for library purposes. It may accept any gift, devise or bequest for the benefit of such library. No member of the library board shall be interested, directly or indirectly, in any contract made by the board. The library board shall report annually in writing to the board of education. (96 v. 8.)

§ 109. [**Museum.**] (§ 3998-7.) Sec. 7. The board of education of any school district, or any board of trustees managing and controlling a library in any school district, may found and maintain a museum in connection with and as an adjunct to such library, and for such purposes may receive bequests and donations of money or other property. (96 v. 9.)

§ 110. [**Taking effect; existing laws.**] (§ 3998-8.) Sec. 8. This act shall take effect and be in force on and after November 15, 1902, and all acts or parts of acts not inconsistent herewith under which existing libraries are maintained, governed and controlled, shall be and remain in full force and effect. (96 v. 10.)

§ 111. [**City board of education may acquire private library; shall be made a public library; board of managers; vacancies in board.**] (§ 3998-9.) Sec. 1. That whenever in any city organized under chapter 4, division 2, of title 12, of the Revised Statutes of Ohio, there is a library owned by a private incorporated or unincorporated association which the owners, or managers thereof, are willing to dispose of and to transfer to the board of education of such city or school district within which said city is situate, the said board of education is hereby authorized to acquire from said association by purchase, or otherwise, said library and the property used by said association for library purposes. Upon acquiring title to said library and property, the said board of education shall declare the same to be a public library and shall elect a board of managers therefor, consisting of six persons, two of whom, at the first election shall be elected for a period of three years, two for a period of two years, and two for a period of one year, and thereafter, upon the expiration of said terms, and all succeeding terms, said managers shall be elected for three years. And said board of education shall fill vacancies in said board of managers for unexpired terms in like manner, and said board of managers shall at all times be amenable to and under the control of said board of education as to tenure of office and authority and shall serve without compensation. The president of said board of education shall be *ex officio* a member of said board of managers, but otherwise, no member of said

board of education shall be a member of said library board. (95 v. 74.)

§ 112. [**Powers and duties of managers.**] (§ 3998-10.) Sec. 2. Said board of managers shall have the care, custody, control and management of said library and property, under such rules and regulations as they shall prescribe and shall have the power to receive donations of land, money and other things of value, and to hold, dispose of, or use the same for the benefit of such library. The use of said library shall be free to all residents of said city and territory thereto attached for school purposes. Said board shall have the power to lease or rent suitable place for the use of said library and establish a reading room or rooms in connection therewith. (95 v. 74.)

§ 113. [**Organization of board; librarian and assistants.**] (§ 3988-11.) Sec. 3. Said board of managers shall elect from their number a president, vice-president, and secretary, and shall appoint a librarian and such assistants and employes as may be necessary for the proper conduct of said library. The term of office of said appointees shall be at the pleasure of the board, but shall not exceed three years. (95 v. 74.)

§ 114. [**Tax levy; expenditure of funds.**] (§ 3998-12.) Sec. 4. For the purpose of paying for such library purchased and of maintaining and increasing said library and reading rooms, the said board of education may levy upon the general tax duplicate of the school district within which such city is situate, a tax not to exceed six-tenths of one mill on each dollar of valuation of the taxable property of said school district which shall be levied, assessed and collected as other taxes levied by said board and shall be in addition thereto. The proceeds of said tax when collected, shall constitute and be called the library fund, and shall be paid to the treasurer of the school district, who shall disburse same only upon warrant of said board of managers, signed by the president and secretary thereof. Said board of managers shall expend said fund in the purchase of books, pamphlets, papers, magazines, periodicals, journals, furniture, and such other property as may be necessary for such library and reading rooms and in the payment of all proper charges for maintenance including the com-

pensation of the librarian and other employes of said board. No part of said fund shall be transferred or used for any other purpose than as provided in this section. All money heretofore appropriated, received, or collected by tax levied for public library purposes in said city, or school district, and remaining unexpended shall be transferred to said library fund, and be expended by said board of managers in accordance with the provisions of this act. (95 v. 74.)

§ 115. [In certain cities board may appoint managers of library.] (§ 3999.) In cities not having less than twenty thousand inhabitants, the board of education having custody of any public library therein, may, at any regular meeting, adopt a resolution providing for a board of managers of such library, and shall thereupon elect by ballot, two persons to serve as members of such board for a term of three years, two persons to serve for a term of two years, and two persons to serve for a term of one year; and annually thereafter two persons shall be elected to serve for a term of three years; all vacancies in such board shall be filled by the board of education by ballot, and a person so elected shall serve during the unexpired term of his predecessor; the president of the board of education shall be a member of the board of managers, *ex officio*; and the board of managers shall at all times be amenable to and under the control of the board of education, as to tenure of office and authority, and shall serve without compensation.

[Board of trustees in Cincinnati; how appointed; terms.] Provided, that in cities of the first grade of the first class upon the expiration of the terms of office of the trustees of the public library therein, heretofore appointed under this section, as amended April 30, 1891, there shall be appointed as successors to said board, a board of trustees of said library, consisting of seven persons, as follows: Two by the board of education of the school district within which such city is situated, two by the board having charge of the high schools of such city, two by the directors of the university in such city, one of each of said appointees shall hold his office for two years, and one for three years; and one by the judges of the court of common pleas of the county within which such city is situated, who

shall hold his office for a period of three years; and thereafter said boards and said judges shall, upon the expiration of the terms of office of said appointees, and each three years thereafter, appoint successors to said trustees. The appointee aforesaid of the judges of the court of common pleas shall succeed in said board of trustees the president of the board of education, who theretofore was, by virtue of his said office, a member of said board of trustees, and thereafter the right of such president of said board of education aforesaid of membership in said board of trustees of said library shall cease.

[**Vacancies.**] All vacancies in said board of trustees of said library shall be filled by the respective bodies having the power of appointment. Provided, however, that nothing herein shall be construed in any wise to abridge the term of office or curtail the powers or duties of the trustees of the public library in cities of the first grade of the first class, appointed under this section as amended April 30, 1891, during the terms of office for which they were appointed. (93 v. 192; 88 v. 446; 64 v. 100, § 1; S. & S., 722.)

§ 116. [**Residents of Hamilton county entitled to use of city library.**] (§ 3999a.) Each and every resident of the county within which is situated any city of the first grade of the first class, having therein established a public library, shall be entitled to the free use of such library, reading rooms and any branch or department of the same, and all the privileges thereof, upon such terms and conditions not inconsistent herewith, as the board of trustees of such library may prescribe. (94 v. 204; 93 v. 193.)

§ 117. [**Powers of trustees in Cincinnati.**] (§ 3999b.) The board of trustees of the public library in cities of the first grade of the first class shall have sole and exclusive charge, custody and control of the public library in such city, including all property, both real and personal, used and occupied by such library, whether acquired heretofore or hereafter, and shall have full power to make all rules and regulations necessary for the proper government, maintenance, care and management thereof, and to provide therefor. Said board of trustees shall have power over, and exclusive control of, the library fund hereinafter provided for, and of the expenditure of all

moneys collected to the credit thereof. They shall have power and it shall be their duty to establish in said city and throughout the county within which is situated said library, reading rooms, branch libraries and library stations in connection with said library, and to lease and furnish said rooms, buildings or parts thereof as are required for such purposes, and to pay all necessary expenses connected therewith. They shall have power, and it shall be their duty to purchase and pay for all books, periodicals, magazines and other literature and supplies necessary, in their judgment, for said public library, reading rooms, branch libraries and library stations, and to incur the necessary expenditures for the encouragement and advancement of the best use of such library, reading rooms, branch libraries and library stations by the public; all such purchases, payments and expenditures to be made out of said library fund hereinafter provided for.

[**Employment of librarian and assistants.**] They shall have power, and it shall be their duty, to employ a librarian, assistant librarians, and other necessary assistants for such public library, reading rooms, branches and stations, to fix the compensation of persons so employed, and to pay the same out of said library fund. Said library board may fix the term of any such person employed by them for any period not to exceed one year. (93 v. 193.)

§ 118. [**Tax for library purposes in Cincinnati.**] (§ 3999c.) For the purpose of increasing, maintaining and managing the public library the board last named shall, on demand, furnish to the county auditor, board of county commissioners, and board of control any information relating to the finances of said board, which either may deem necessary in the proper discharge of the duties imposed by this act. The provisions of section 2834b of the Revised Statutes shall apply to all contracts, agreements, obligations and orders involving the expenditure of money, entered into or made by the board of trustees of the public library of any such city, and any action of any such board, contrary to the provisions of said section, shall be void, except that the certificate of the county auditor required by said section shall not be necessary in case of current expenditures, or in case of any other expenditures not

exceeding five hundred dollars, or in case of contracts for the employment of officers, assistants or other employes of such board. (94 v. 204; 93 v. 194.)

§ 119. [Disposition of unexpended fund heretofore raised for library purposes in Cincinnati.] (§ 3999*d*.) The amount of any fund heretofore raised by a levy or tax by the board of education in such city for school library purposes, and all library funds remaining unexpended, shall be transferred from the respective funds to the library fund herein created, to be expended and paid out as herein provided for funds produced by a levy made by said board of trustees, and any and all funds, bonds, stocks or other species of property held by the board of education of such city, or by any of the departments of such city for the benefit of the public library thereof, shall be transferred to the board of trustees of such public library, to be held and controlled by them subject to the terms of the respective donations. (93 v. 194.)

§ 121. [Who ineligible as members of the library board.] (§ 3999*e*.) No member of any of the boards exercising the power of appointment of the trustees of the public library, as provided in section 3999 (§ 115), shall be appointed or elected a member of said library board. (94 v. 204.)

§ 122. [Carnegie donation, library trustees may accept.] (§ 3999*f*.) Sec. 1. That the board of trustees of the public library of the school district of Cincinnati be and it is hereby authorized to receive and accept the said donation of Andrew Carnegie upon the terms and conditions therein expressed, the branch libraries constructed under the provisions of said donation to be by said library trustees and their successors equipped, furnished and maintained, and forever kept open for the free use of the public. (95 v. 902.)

§ 123. [Bonds for sites, equipment, etc., of libraries.] (§ 3999*g*.) Sec. 2. That for the purpose of providing the sites and furnishing the equipment necessary for said branch libraries the said board of trustees is hereby authorized and empowered to borrow as a fund therefor such sum as may be necessary, not exceeding one hundred and eighty thousand dollars,

and to issue registered or coupon bonds therefor, which shall be known and designated as "The Public Library bonds of the school district of Cincinnati," and shall be issued in such sums and be made payable at such times and places as shall be deemed best by said board. Said bonds shall be signed by the president and secretary of said board and a record kept thereof. They shall bear a rate of interest not exceeding three and one-half per centum per annum, and shall not be sold for less than par, nor until after four successive weekly advertisements in two newspapers published and of general circulation in said city. For the purpose of paying the interest and providing a sinking fund for the final redemption of said bonds, the said board of trustees shall levy annually a tax upon the taxable property of said school district sufficient in amount to pay the said interest upon said bonds, and to provide a sinking fund for their final redemption. The said tax shall be certified annually by said trustees to the auditor of the county in which said school district is situate, and shall be by him placed upon the tax duplicate of said district in addition to all other taxes allowed by law, and said tax shall be levied, assessed and collected as other taxes. The proceeds of said tax, when collected, shall be credited to the said library trustees of the sinking fund for the payment of the said bonds and interest. Said trustees shall pay therefrom the said annual interest upon said bonds, and the portion assessed and collected for the sinking fund shall be invested by them in bonds of the United States, state of Ohio, or the city of Cincinnati, and from the proceeds of said investment they shall pay the said bonds at maturity. (95 v. 902.)

§ 124. [Power of trustees to lease or purchase sites, etc.; contracts for branch libraries; title to property.] (§ 3999h.)

Sec. 2. Said library trustees shall have power to purchase or lease and to hold land necessary for suitable sites on which to erect said branch libraries, and shall use said fund in the payment therefor, and in suitably equipping said libraries for use. It shall require the affirmative vote of not less than two-thirds of the members of said board to purchase or lease any such land or to make any contracts concerning the erection of such branch libraries. Purchases made may be for cash or on time, and if on time, said board may issue its obligations for

the deferred payments and secure the same by mortgage upon the land purchased. Said trustees shall have power and they are hereby authorized to make all necessary contracts for the construction, furnishing and equipping of such branch libraries. The title to the land acquired under this act shall be taken in the name of "The trustees of the Public Library of the school district of Cincinnati," and shall be held by them in trust for public library purposes, and said trustees shall have the care, custody, management, and control of all property provided for public library purposes under this act. (95 v. 903.)

§ 125. [Exemptions from taxes, execution, etc.] (§ 3999i.) Sec. 4. All property, real or personal, vested in such library board or used for library purposes, shall be exempt from taxation, and from sale on execution or any writ or order in the nature of an execution. (95 v. 903.)

§ 126. [Donations, taxes, etc.] (§ 3999j.) Sec. 5. Said trustees shall have the right to receive and accept donations of land, money, or other thing of value, and to invest, use, or dispose of the same in the interest of the library. (95 v. 903.)

§ 127. [Power of trustees to control funds; contracts for buildings, etc.] (3999k.) Sec. 6. The said library trustees, and their successors shall be the trustees of said fund so as aforesaid raised and provided, and shall have the control and disbursement of the same. They may maintain and defend suits, appoint, employ and pay officers and agents. No contract shall be made for any part of the construction of said library building, or for any work to be done in connection therewith, which shall involve the expenditure of more than five hundred dollars, save upon public advertisement for not less than thirty days in two newspapers, printed and of general circulation in said city, inviting proposals therefor. Said trustees shall have power to take such security from any officer, agent, or contractor chosen, appointed, or employed by them as they shall deem advisable. They shall not become surety for any officer, agent or contractor, or be interested directly or indirectly in any contract concerning said library. (95 v. 903.)

§ 128. [Officers of trustees; depositories of funds, etc.] (3999L.) Sec. 7. The said trustees shall choose from their number a president, vice-president, secretary and treasurer, and may select a depository within said city which shall be a national bank or trust company organized under the laws of this state in which to deposit any funds coming into the hands of said treasurer, and they may make contracts for the safe keeping of said funds and the payment of interest thereon. (95 v. 904.)

§ 129. [Cleveland public library.] (§ 4000.) The public library board of the city of Cleveland shall consist of seven suitable persons, residents of said city, no one being a member or officer of the board of education. The members of the library board shall serve without compensation and hold their offices for three years and until their successors shall have been elected and qualified, except at the first election two of the board shall be elected for one year, two for two years, and three for three years. After said first election so many shall be elected each year as equals the number whose term expires that year. They shall be elected by roll-call as in other cases by the board of education of the city of Cleveland, at its first regular meeting after the third Monday in April, 1886, and annually thereafter as hereinbefore provided. The board of education shall have power at any time to fill vacancies in the library board for unexpired terms by election as aforesaid. (1886, April 28; 83 v. 104; 80 v. 172; Rev. Stat. 1880; 75 v. 101, § 1.)

§ 130. [Powers and duties of library board.] (§ 4001.) Such library board shall report in writing to the board of education once each year, and oftener if required by the latter, shall have exclusive charge and control of the public library of the city, and shall have full power to make all rules and regulations for the government and management thereof; to employ a librarian and such assistants and help as may be needed for the care and protection of the library, and to attend to the drawing and return of books; but prior to such employment the compensation of such librarian, assistants and help, shall be fixed by the library board, a majority of the members thereof voting in favor of such compensation, on

roll-call by the secretary, and such librarian, assistants and help shall be employed by a vote in the same manner. (1883, April 18; 80 v. 172; 78 v. 132; Rev. Stat. 1880; 76 v. 50, § 2.)

§ 131. [Library tax, and how expended.] (§ 4002.) For the purpose of increasing and maintaining the public library in said city, and the territory thereto attached for school purposes, such library board may levy annually a tax of eight-tenths of one mill on each dollar valuation of the taxable property of the city, and the territory thereto attached for school purposes, to be levied, collected and paid in the same manner as are school taxes of the city; all money appropriated, received or collected by tax for the library, shall be expended under the direction of the library board in purchasing such books, pamphlets, papers, magazines, periodicals, journals and other property as may be deemed suitable for the public library and in payment of all other charges and expenses, including compensation of the librarian, assistants and help that may be incurred in increasing and maintaining the library, and all claims against said fund shall be approved by the president and secretary of said library board and paid upon the warrant of the auditor of the board of education in the manner now provided by law for the payment of claims against said city. (94 v. 26; 91 v. 268, 123; 90 v. 96; 80 v. 172, 173; Rev. Stat. 1880; 76 v. 50, § 3; 95 v. 438.)

§ 132. [Cleveland library board to hold title and control property.] (§ 4002-1.) Sec. 1. Said library board, in its own name shall hold the title to and have the custody, management and control of all property of said library board, both real and personal, whether acquired heretofore, or hereafter, and shall have power over, and the executive control of the expenditures of moneys collected for the purpose of purchasing lands, and erecting buildings and also have complete custody, management and control of all public libraries and branches and stations thereof, and the reading rooms connected therewith. (92 v. 590.)

§ 133. [Can purchase, lease or condemn.] (§ 4002-2.) Sec. 2. Said library board shall have power, by a two-third vote of its members entered upon its journal, to purchase grounds and

erect suitable library buildings, and to lease grounds and suitable library buildings, and in case suitable grounds can not be purchased, to condemn the grounds desired, by virtue of the power of eminent domain, and erect thereon suitable and appropriate buildings for library use. The title to such grounds so purchased or condemned and buildings erected shall be taken to and vest in the said library board. (92 v. 590.)

§ 134. [**Proceedings to condemn.**] (§ 4002-3.) Sec. 3. When it is deemed necessary by said library [board] to condemn or appropriate private property, whereon to erect library buildings, said library board in making such appropriation shall proceed in accordance with the provisions of section 2235 and subsequent sections found in chapter 3, division 7, title 12 of the Revised Statutes of Ohio and acts amendatory thereof and supplementary thereto. (92 v. 590.)

§ 135. [**Donations.**] (§ 4002-4.) Sec. 4. Said board may by resolution accept any gift, devise or bequest of property, real and personal, for the benefit of the library. (92 v. 590.)

§ 136. [**Exempt from tax and execution.**] (§ 4002-5.) Sec. 5. All property, real or personal, vested in any public library board shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution. All conveyances made by such library board shall be executed by the president and secretary thereof. (92 v. 590.)

§ 137. [**Oath.**] (§ 4002-6.) Sec. 6. Each person appointed a member of such board shall, upon entering upon the duties of his office, take an oath or affirmation, to obey the constitution of the United States and the constitution of the state of Ohio, and that he will faithfully perform the duties of his office. (92 v. 590.)

§ 138. [**Organization.**] (§ 4002-7.) Sec. 7. Said library board at its first meeting in June after the passage of this bill, and annually thereafter in June, shall organize by choosing a president, vice-president and a secretary, and in the absence of the president or his inability to act, the vice-president shall perform the duties of the president. (92 v. 590.)

§ 139. [**Annual report.**] (§ 4002-8.) Sec. 8. Said library board shall make an annual report to the board of education stating the condition of their trust, the various sums of money received from the library fund and from other sources and how such moneys have been expended, and for what purposes; the number of books and periodicals on hand; the number added by purchase, gifts or otherwise during the year; the number lost or missing, the number of books loaned out and the general character of the books, with other statistics, information and suggestions as they may deem of general interest. (92 v. 590.)

§ 140. [**No member of board to be interested in contract, except; validity of contract.**] (§ 4002-9.) Sec. 9. No member of such library board shall have any pecuniary interest, either directly or indirectly, in any contract made with the board or be employed in any manner or have any compensation from the board of which he is a member, except as secretary, and no contract shall be binding upon such board unless it be made or authorized to be made at a regular or special meeting of the board. (92 v. 590.)

§ 141. [**Use of library and reading room.**] (§ 4002-10.) Sec. 10. Every library and reading-room established under this act shall be free to the use of the inhabitants of such city and those who reside in the territory thereto attached for school purposes, subject, however, to such rules and regulations as the library board may deem necessary to adopt and publish, to protect and preserve property therein in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and said library board may exclude and cut off from the use of said library and reading-room any and all persons who shall wilfully violate any of such rules and regulations. (92 v. 590.)

§ 142. [**Bonds to pay for land and building.**] (§ 4002-11.) Sec. 11. Said library boards may issue bonds with interest coupons attached, to obtain land and building for a public library and to furnish the same and to pay the cost and expense thereof, and in anticipation of income from taxes for such purposes levied or to be levied, may from time to time, as occasion

requires, or at any time after the passage of this bill, issue and sell bonds, bearing interest, payable semi-annually, at a rate specified therein, not exceeding five per cent. (5%) per annum, and in such sums and at such times as the library board may determine, which bonds shall be numbered consecutively, made payable to the bearer and be signed by the president and secretary of the board and denominated "public library bonds of the city of Cleveland, Ohio," and the secretary of said board shall keep a record of the number, date, amount and rate of interest on each bond sold, the sum for which and the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times, and the bonds so issued shall in no case be sold for less sum than the par value nor bear interest until the purchase money for the same shall have been paid by the purchaser and such library board shall pay such bonds and the interest thereon when due, provided that the total issue of bonds shall not exceed two hundred and fifty thousand dollars (\$250,000). (92 v. 590.)

§ 143. [Resolution to issue; sale of.] (§ 4002-12.) Sec. 12. The order to issue such bonds shall be made only at a regular meeting of such board and by a vote of five-sevenths of all the members thereof, taken by yeas and nays and entered on the journal of the board, and such bonds shall be sold to the highest bidder after being advertised once a week for four (4) consecutive weeks in a newspaper having a general circulation in the county where such bonds are issued, and if there shall be more than one newspaper in such city having a general circulation in the county where such bonds are issued, then the sale of such bonds shall be advertised in at least one additional newspaper of such general circulation in such county, the advertisement shall state the total number of bonds to be sold, the amount of each, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing their issue, day, hour and place in the county where they are to be sold, and the privilege shall be reserved by such board to reject all or any bids, and if said bids are rejected said bonds shall be advertised and the moneys arising on premiums of the sale of said bonds as well as the principal shall be credited to said

fund on account of which the bonds are issued and sold and shall be used for the purpose provided in this section. (92 v. 590.)

§ 144. [**Sinking fund.**] (§ 4002-13.) Sec. 13. For the purpose of creating a sinking fund for the extinguishment of the bonds provided for in the preceding section, said library board may annually until the payments of the bonds are fully provided for, levy and collect a tax in addition to other taxes now authorized to be levied by it, which shall not exceed two-tenths of one mill upon the taxable property of the city of Cleveland and the territory thereto attached for school purposes, which tax shall be paid into the treasury of said city and on order of the director of accounts of said city paid over to the sinking fund commission hereafter provided for and by them applied by order of the library board to the extinguishment of the bonds in the preceding section provided and to no other purpose whatever, and the taxes so levied shall be certified and placed on the tax list and collected in the same manner as school taxes of said city and such tax shall be a lien upon the property whereon they are assessed and the same as state and county taxes and subject to the same penalties if delinquent. (92 v. 590.)

§ 145. [**Trustees of sinking fund.**] (§ 4002-14.) Sec. 14. In such city there shall be a board designated as "the trustees of the library sinking fund of the city of Cleveland" composed of three (3) citizens thereof, to be appointed by the court of common pleas in the county in which such city is situated. The first appointment shall be one for the term of one year, one for the term of two years, and one for the term of three years and all trustees appointed thereafter shall serve for three years, except in case of vacancy, which shall be filed by said court for the unexpired term, and before any person appointed as a member of such board shall assume the duties of his office he shall give bond to the state of Ohio in the sum of five thousand dollars (\$5,000) with not less than two sureties to faithfully discharge his said duties. (92 v. 590.)

§ 146. [**Their organization.**] (§ 4002-15.) Sec. 15. Such trustees immediately after appointment and qualification shall

organize by appointing one of their number as president and the director of accounts of such city shall act as secretary of said board of trustees and the library board shall provide such trustees with a place of meeting, and regular meetings of such trustees shall be held on the second Monday of January and July of each year, but other meetings may be called by the president or any member of the board. Their proceedings shall be recorded in a journal kept for that purpose which shall at all times be kept open to the inspection of the library board or any member thereof and all questions relating to the purchase or sale of securities, payment of bonds or interest shall be decided by a viva voce vote with the name of each member voting recorded on the journal and no question shall be decided unless approved by a majority of the whole board. (92 v. 590.)

§ 147. [Their duty to certify tax.] (§ 4002-16.) Sec. 16. The trustees of such sinking fund shall in the month of May in each year and oftener, if required, certify to the library board the rate of tax, not exceeding the limit herein provided, necessary to provide a sinking fund for the payment of the bonds issued by authority of this bill together with the amount necessary to be levied to provide for the payment of the interest thereon, and the library board shall levy the amount so certified as under this act provided and for the full amount so certified, but said library board may increase the amount so reported, provided the total amount so levied does not exceed the limitation provided in this bill. (92 v. 590.)

§ 148. [Investments by.] (§ 4002-17.) Sec. 17. The trustees of such sinking fund shall invest all moneys received by them in bonds of the United States, state of Ohio, city of Cleveland, city of Cincinnati, city of Columbus, and the city of Toledo, and they shall give preference to the bonds of the city of Cleveland, where they can be purchased at a price equal to, or, less than the bonds of the United States, or of the state of Ohio, taking into consideration the rate of interest paid on each, and the interest received shall be reinvested in like manner and at no time shall there be more than \$5,000 kept on deposit if investment can be made, and said trustees shall

provide for the payment of all interest on said bonds herein authorized to be issued, together with the principal thereof at maturity of said bonds, from said funds so invested by them. (92 v. 590.)

§ 149. [Cleveland may appropriate from school fund for library.] (§ 4002-18.) Sec. 1. In all cities, which, by the last federal census, had, and all those which hereafter, on the first day of March, in any year, as ascertained by any federal census, may have, a population exceeding ninety thousand and less than two hundred thousand inhabitants, it shall be lawful to appropriate from the school fund, an amount equal to the proceeds of one-tenth of one mill of the tax levy, to maintain or assist in maintaining the public library and pay in part the cost and expense of supporting and running any public library in said cities in addition to the one-tenth of one mill now authorized by law to be raised by taxation for that purpose; provided, that this act shall not be construed to authorize any increase in levies for school purposes, including libraries in said cities, over that made in 1877. (75 v. 11.)

IN TOLEDO.

§ 150. [Toledo public library; tax for library.] (§ 4002-19.) Sec. 1. In any city of the third grade of the first class, the city council may, by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such city, to establish and maintain therein a public library and reading-room. That hereafter the said city council shall, annually, levy a tax of thirty-five one-hundreths (35-100) of one mill on the dollar on the taxable property of such city for that purpose, to be called the library fund; and which levy shall be certified to the county auditor of the county, and by him placed on the tax duplicate of the county and collected as other taxes. (94 v. 166; 1888, April 12; 85 v. 209; Rev. Stat. 1880; 70 v. 142.)

(§ 4002-20.) Sec. 1a. Repealed April 14, 1900. (94 v. 166.)

§ 151. [Board of trustees.] (§ 4002-21.) Sec. 2. The custody and management of such public library and reading-room, as well as its entire administration, shall be committed to a

board of trustees, nine in number, of whom the mayor of such city for the time being shall be one, and the others shall be appointed by the common council, four of whom shall be appointed from such names as shall be nominated to the common council by the board of education of said city, and shall be citizens of approved learning, discretion, and fitness for such office. They shall hold their office for the term of four years, and until their successors are duly elected and qualified; provided, that the trustees first appointed, other than the mayor, shall be elected respectively for terms of one, two, three, and four years, from the first day of January next following their election, two for each term. Any vacancy caused by the death, resignation, or removal of a trustee, or otherwise, shall be filled for his unexpired term by appointment of the common council. No trustees shall have compensation as such. (1888, April 12; 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

§ 152. [Transfer of libraries to such board by the board of education.] (§ 4002-22.) Sec. 3. As soon as said board of trustees shall be elected and organized, it shall be the duty of the board of education in such city to transfer to the custody and control of such board of trustees whatever public library or libraries may be in its possession or control, except such books of reference, maps or charts as the board of education may think proper to retain for use in school buildings; and thereafter no tax shall be levied by such board of education for a library fund. (1888, April 12; 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

§ 153. [Organization of trustees; regulations; powers; deposit of library funds; warrants; power to purchase or condemn grounds; issue and sale of public library building bonds; payment of said bonds and interest; title to grounds purchased; librarians and assistants.] (§ 4002-23.) Sec. 4. Said trustees shall immediately after their appointment, meet and organize by the election of one of their number as president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own government and guidance of the library, reading room and employes as may be expedient and not inconsistent with this act.

[**Exclusive control.**] They shall have power over and the exclusive control of the expenditure of all moneys collected to credit of the library fund, and of the supervision, care, custody and control of the grounds and buildings constructed for such purpose, or rooms leased or set apart for such purpose; provided, that all moneys collected for such library, including proceeds of the bonds herein authorized, and all others, shall be deposited in the treasury of said city to the credit of the library fund, and shall be kept separate and apart from other funds, and the city auditor shall issue his warrant when drawn upon by said board of trustees, or by its proper officers duly authorized.

[**Purchase grounds.**] Said board shall have the power, by a two-third vote of said trustees entered upon its journal, to purchase grounds, and in case suitable grounds can not be purchased, to condemn the grounds desired, and erect thereon suitable and appropriate building or buildings for the use of said library; the cost of such ground and buildings not to exceed in the aggregate the sum of \$45,000; and for such purpose said board is authorized and empowered to borrow money upon bonds as hereinafter provided to pay for the same, not to exceed the aggregate, the sum of \$45,000; and the said boards of trustees is authorized to issue and sell its bonds, for the above named amount, with coupons for interest, divided into and payable in fifteen consecutive annual payments; the first of which shall become due three years after their issue.

[**Issue bonds.**] Said bonds shall be denominated "The Public Library Building Bonds" of said city, and shall be for the sum of \$500 each, payable to bearer, and bear interest at the rate not exceeding four and one-half per cent. per annum, payable semi-annually. Said bonds and coupons shall be signed by the president of said board and attested by its secretary; and in making sale of said bonds the said board of trustees shall be governed by the provisions of an act of the general assembly passed March 22, 1883 (O. L., vol. 80, p. 68), entitled "an act providing for the sale of public lands."

[**Payment of bonds.**] To meet the payment of said bonds and interest, the said board of trustees shall appropriate and set apart annually from said library fund, a sum sufficient for

such purpose, not to exceed one-half of the tax revenues collected for such year.

[**Title to land.**] The title to such grounds so purchased shall be taken to and vest in the trustees of the public library of such city; said trustees shall be held and considered to be special trustees thereof for such city. Said board shall have power to appoint suitable librarians and necessary assistants, fix salaries of same, and shall, in general, carry out the spirit and intent of this act in establishing and maintaining the best public library and reading-room with the means at their disposal. (1888, April 12; 85 v. 209, 210; Rev. Stat. 1880; 70 v. 142.)

§ 154. [**Additional bonds authorized to be issued for certain purposes.**] (§ 4002-24.) Sec. 4a. For the purpose of enabling said board of trustees to construct said building or buildings so as to make it or them fireproof, and thereby insure protection to the large and valuable library to be kept therein, and to pay the increased cost of such construction, and complete said building or buildings, and provide necessary furniture for same, and to pay for grading the library grounds and constructing walks, said board of trustees is hereby authorized to issue and sell additional bonds to an amount not in excess of thirty-five thousand dollars (\$35,000); said additional bonds shall bear interest, be issued, sold, the proceeds deposited, drawn, used, and the interest and principal paid, as provided, and subject in all respects to all the conditions named in said original section 4, for the bonds therein authorized, except as follows: the bonds hereby authorized, shall mature, three thousand dollars (\$3,000.00) July 1, 1890; five thousand dollars (\$5,000.00) July 1, 1906; and five thousand dollars (\$5,000.00) July 1, of each succeeding year until July 11, 1911, when seven thousand dollars (\$7,000.00) shall mature, but if it be found unnecessary to issue all of said bonds, those not issued shall be those last to mature as aforesaid; and the rate of interest shall not exceed four per cent. on those bonds to mature July 1, 1906, and thereafter; and said board shall annually appropriate and set apart such additional sum as may be necessary to pay said bonds and the interest thereon as the same mature. (1889, March 12; 86 v. 79.)

§ 155. [**Purchase of a site for library.**] (§ 4002-25.) Sec. 4*b*. That on the request of said board by a two-thirds vote of all of the trustees, entered on its journal, any such city of the third grade of the first class, may purchase, appropriate, enter upon and hold, any real estate within its limits, by it deemed necessary for the purpose of providing said public library with suitable library grounds and extensions or additions thereto. The cost and expense of acquiring such grounds, extensions or additions shall be paid for by the trustees of such public library, out of any moneys in its hands or due and owing to it from the public library fund. (88 v. 92.)

§ 156. [**Appropriation of private property.**] (§ 4002-26.) Sec. 4*c*. That when it is deemed necessary by any such city of the third grade of the first class to appropriate private property as heretofore provided in said supplementary section 4*b*, any such city shall proceed in making such appropriation under and in accordance with the provisions of section 2235 and the subsequent sections thereto as found in chapter 3, division 7, title 12 of the Revised Statutes of this state, in so far as the same are applicable. (88 v. 335.)

§ 157. [**Additional building bonds.**] (§ 4002-27.) Sec. 4*d*. For the purposes specified in said original section four (4) and the first section supplemental thereto, section 4*a*, and to complete the carrying out of such purposes, and paying therefor, said board of trustees is hereby authorized to issue and sell additional bonds to an amount not in excess of five thousand dollars (\$5,000.00); and such additional bonds shall be issued and sold and their proceeds disposed of and their payment including interest provided for, in all respects in the same manner and subject to the same conditions, as provided in said supplemental section 4*a* for the bonds to mature July 1, 1906, and thereafter, except that those hereby authorized shall mature July 1, 1912. (89 v. 419.)

§ 158. [**Library to be free, subject to reasonable rules.**] (§ 4002-28.) Sec. 5. Every library and reading-room established under this act, shall be and remain forever free to the use of the inhabitants of such city, subject, however, to such reasonable rules and regulations as the library board may find and

deem necessary to adopt and publish, to protect and preserve the property therein, in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and said board may exclude and cut off from the use of said library and reading-room, any and all persons who shall wilfully violate any of such rules and regulations. (1888, April 12; 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

§ 159. [**Annual report to city council.**] (§ 4002-29.) Sec. 6. The said board of trustees shall make an annual report to the city council, stating the condition of their trust, the various sums of money received from the library fund, and from other sources, and how much moneys have been expended, and for what purpose; the number of books and periodicals on hand; the number added by purchases, gifts or otherwise during the year; the number lost or missing, the number of books loaned out, and the general character and kind of such books, with other statistics, information and suggestions as they may deem of general interest. (1888, April 12; 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

§ 160. [**Penalty for injuring library property.**] (§ 4002-30.) Sec. 7. The city council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of any and all persons committing injury upon such library buildings, grounds or other property thereof. (1888, April 12; 85 v. 209, 211; Rev. Stat. 1880; 70 v. 142.)

§ 161. [**Power of trustees to accept donations, etc.**] (§ 4002-31.) Sec. 8. Any person or persons desiring to make, devise or bequest, donation or gift of either books, personal property, money or real estate, to and for the use and benefit of such library, may vest the same or title thereto in the said trustees created under this act; to be held and controlled by said board, its successors, when accepted, according to the terms of such devise, bequest or deed of gift of such property; and as to such property the said board of trustees shall be held and considered special trustees thereof. (1888, April 12; 85 v. 209, 212; Rev. Stat. 1880; 70 v. 142.)

IN DAYTON.

§ 162. [**Dayton public library board; election of.**] (§ 4002-32.) Sec. 1. In any city of the second grade of the second class the city board of education may elect by ballot, a special board of six competent persons, residents and electors of said city or school district, to be called the library board, which board shall have the sole custody, control and management of the public library of such city and of any reading-rooms, branch libraries or library stations by said library board established in connection with such public library. (89 v. 229; 84 v. 171.)

§ 163. [**Political composition of; terms; vote required to elect.**] (§ 4002-33.) Sec. 2. The six members of said library board shall be selected equally from the two political parties having the largest representation in the city board of education and shall be elected as follows: Two for a term of one year, two for a term of two years and two for a term of three years, one member from each of said political parties to be elected for each of several terms; and at the end of the first year and of each year thereafter, two members of said library board, one from each of said political parties, shall be elected, by ballot, by said board of education for the term of three years. It shall require the affirmative vote of a majority of all the members elected to said board of education to elect the members of said library board. (89 v. 229; 84 v. 171.)

§ 164. [**Powers and duties.**] (§ 4002-34.) Sec. 3. Said library board shall have power over and the exclusive control of the library fund hereinafter provided for, and of the expenditure of all moneys collected to the credit thereof. They shall have power to establish in said city reading-rooms, branch libraries and library stations in connection with such public library, and to lease and furnish such rooms, buildings or parts thereof as are required for such purposes, and to pay all necessary expenses connected therewith. They shall have power and it shall be their duty to purchase and pay for all books, periodicals, magazines, and other literature, and supplies necessary, in their judgment, for said public library, reading-rooms, branch libraries and library stations, and to incur the neces-

sary expenditures for the encouragement and advancement of the best use of such public library, reading-rooms, branches and stations, by the public; all of such purchases, payments and expenditures to be made out of said library fund hereinafter provided for. They shall have power and it shall be their duty to employ a librarian, assistant librarians, janitors and other necessary assistants for such public library, reading-rooms, branches and stations, to fix the compensation of persons so employed and to pay same out of said library fund. Said library board may fix the term of such persons employed by them for any period not to exceed one year. (89 v. 229; 84 v. 171.)

§ 165. [Expenses of library for ensuing year.] (§ 4002-35.) Sec. 4. Said library board shall, annually, prior to the annual levy of taxes made by the city board of education, report and certify to such city board of education a statement of the amount by said library board deemed necessary for the expenses and expenditures of such library board for the ensuing year; and said city board of education shall annually levy a tax for such library purposes and for the use of such library board for such purposes for such ensuing year to the full amount so reported and certified by said library board; provided, however, that the amount so levied shall not exceed the amount hereinafter authorized to be levied for such purposes. The fiscal year of said library board shall be the same as that of the board of education. (89 v. 229; 84 v. 171.)

§ 166. [Tax for library fund; custodian; disbursements and balance.] (§ 4002-36.) Sec. 5. The board of education of said city wherein a library board exists under the act to which this act is amendatory or shall hereafter be elected under this act, shall have the power and it shall be the duty of such board of education to levy annually for such public library purposes a tax not exceeding four-tenths of one mill on the dollar of the city valuation, to be called the library fund, which levy shall be certified by said board of education to the county auditor of the county in which said city is situate, within the time and in the manner fixed for the certifying of other levies made by said board of education; and [which levy shall be by said auditor placed on the tax duplicate of the county]

and collected as other taxes. Such levy for library purposes shall not be a part of the general levy authorized to be made by such board of education for school purposes. The money realized from said levies and all moneys received or collected by the trustees for the library, shall be placed in the treasury of the county, subject to the order of the board of trustees of said library. Said funds shall be kept separate and apart from other funds and the treasurer shall be the custodian thereof, and no money shall be drawn therefrom except upon the requisition of the board of trustees of the library, certified by the president and secretary of said board and directed to said county treasurer. Any part of said funds unexpended during any year shall remain to the credit of said library fund. (94 v. 484; 89 v. 229; 84 v. 171.)

§ 167. [**Provisions governing board.**] (§ 4002-37.) Sec. 6. Said library board shall, immediately after their election meet and organize by the election of a president, a secretary and other necessary officers from their number, and such election shall be held annually thereafter. Said board shall make and adopt such by-laws, rules and regulations for their own government and guidance and for the government and guidance of the public library, reading-rooms, branch libraries, and stations, and of the employes of said board as may be expedient and not inconsistent with this act, and said board shall, by their by-laws, designate the officers authorized to draw orders upon said library fund. Any public library now established in any such city and which is maintained and in operation under and by virtue of the provisions of the act to which this act is amendatory, and the existing library board of such city and the officers thereof, shall be governed by the provisions of this act; and such library board shall succeed to and be vested with all the rights, powers and privileges, and charged with all the duties herein granted or imposed; and the members of such existing library board elected thereto by the board of education prior to the taking effect of this act shall continue as such until the expiration of their present terms, and their successors shall be elected pursuant to the provisions hereof. The present officers of such existing library board shall continue in office until the expiration of their present terms as such officers or until a vacancy occurs therein prior to such

expiration when their successors shall be elected pursuant to the provisions hereof. Where such existing library board has heretofore reported to such board of education their estimate of the expenses of such library for the current year, pursuant to the provisions of the act to which this act is amendatory, such board of education shall forthwith upon the taking effect of this act, set apart and pay over to the said county treasurer as the treasurer of such library fund the unexpended balance of the appropriation heretofore made by such board of education for such library expenses for the current year, which balance shall become and constitute a part of said library fund hereinbefore provided for and shall be expended by said library board for the maintenance, management and expenses of such public library, reading-rooms, branch libraries and library stations, for the remainder of such current year. (89 v. 229; 84 v. 171.)

§ 168. [Museum may be established.] (§ 4002-38.) Sec. 1. In any city of the second grade of the second class, wherein there now is or shall hereafter be a public library of such city, under the control, custody and management of a library board established pursuant to the provisions of an act entitled "An act to provide for competent and non-partisan public library boards in cities of the second class, second grade," passed March 21, 1887 (O. L., v. 84, p. 171), and of acts amendatory thereto, such library board shall have the power, and is hereby authorized to establish and maintain, in connection with such public library, a public museum for the benefit of the public of such city; and such board may appropriate and expend, out of the amount of the tax levy heretofore or hereafter annually made for library purposes and for the use of such board, such amounts as are in their judgment necessary for the establishment and maintenance of such public museum. Such library board is empowered to receive, by way of gift, loan or purchase, specimens and collections for such museum, to be accepted and held by such board and their successors in office, in trust for museum purposes, and under such conditions and regulations as they may from time to time establish. Such library board may make, from the funds arising from such levy, such purchases of specimens and collections for such

museum, as shall not impair the proper and sufficient use of such funds for library purposes. (90 L. L. 377.)

IN SMALLER CITIES AND VILLAGES.

§ 169. [**Certain cities and villages may have libraries; tax.**] (§ 4002-39.) Sec. 1. The common council of every city not exceeding in population thirty thousand inhabitants and of every incorporated village shall have power to establish and maintain a public library and reading-room, and for such purpose may annually levy and cause to be collected, as other general taxes are, a tax not exceeding one mill on each dollar of the taxable property of such city or village, to constitute the library fund, which shall be kept by the treasurer separate and apart from other money of the city or village, and be used exclusively for the purchase of books, periodicals, necessary furniture and fixtures and whatever is required for the proper maintenance of such library and reading-room. (89 v. 98.)

§ 170. [**Directors.**] (§ 4002-40.) Sec. 2. For the government of such library and reading-room there shall be a board of six directors, appointed by the council of such city or village from among the citizens thereof at large, and not more than one member of the council of such city or village shall at any one time be a member of said board. Such directors shall hold their office for three years from the date of appointment, and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into three classes, one-third for one year, one-third for two years, and one-third for three years, and their terms shall expire accordingly. All vacancies shall be immediately reported by the directors to the proper council, and be filled by appointment in like manner; and if an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed to any director. (89 v. 98.)

§ 171. [**Organization; by-laws, etc.; control of expenditures; custody of building; how money drawn from treasury; librarian and assistants.**] (§ 4002-41.) Sec. 3. Said directors shall, immediately after their appointment, meet and organize by the election of one of their number president, and by the

election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance, and for the government of the library and reading-room, as may be expedient. They shall have the exclusive control of the expenditures of all moneys collected for the library fund, and the supervision, care and custody of the rooms or buildings constructed, leased or set apart for that purpose, and such money shall be drawn from the treasury by the proper officers, upon the properly authenticated voucher of the board of directors, without otherwise being audited. They may, with the approval of the common council, lease and occupy, or purchase, or erect on purchased ground, an appropriate building, provided that no more than half the income in any one year can be set apart in said year for such purpose or building. They may appoint a librarian and assistants, and prescribe rules for their conduct. (89 v. 98.)

§ 172. [**Who may use library.**] (§ 4002-42.) Sec. 4. Every library and reading-room established under this chapter shall be forever free for the use of the inhabitants of the city or village where located, always subject to such reasonable rules and regulations as the library board may find necessary to adopt and publish in order to render the use of said library and reading-room of the greatest benefit to the greatest number; and they may exclude and cut off from the use of said library and reading-room any and all persons who shall wilfully violate such rules. (89 v. 98.)

§ 173. [**Annual report.**] (§ 4002-43.) Sec. 5. The said board of directors shall make an annual report to such council, stating the condition of their trust—the various sums of money received from the library fund, and from all other sources, and how much has been expended; the number of books and periodicals on hand; the number added by purchase, gift or otherwise during the year; the number lost or missing, the number of books loaned out, and the general character and kind of such books, with such other statistics, information and suggestions as they may deem of general interest. (89 v. 98.)

§ 174. [**Donations.**] (§ 4002-44.) Sec. 6. All persons desirous of making donations of money, personal property or real

estate, for the benefit of such library, shall have the right to vest the title of the same in the board of directors created under this law, to be held and controlled by said board, when accepted according to the terms of the deed of gift, devise or bequest of such property, and as to such property the said board shall be held and considered to be special trustees. (89 v. 98.)

§ 175. [Tax to assist existing library association.] (§ 4002-45.) Sec. 7. In case a free public library has already been established in any city or incorporated village, and duly incorporated and organized, the council may levy a tax for its support as provided in this act, without change in the organization of such library association, and the sum so raised shall be paid to the officer or officers duly authorized to receive the same, and shall be under the control of the said library association; provided, that if at any time such library association ceases to exist or from any reason fails to provide a free circulating library as required by the provisions of this act, the books and other property accumulated from the proceeds of the levy herein authorized shall become the property of the city or village and be subject to the control of the council as herein provided. (89 v. 98.)

§ 176. [Library association in certain cities; levy.] (§ 4002-46.) Sec. 1. In any city of the fourth grade of the second class, and in which city there is established and maintained by a public library association duly incorporated, but not organized for profit, a public library, free to all the inhabitants of such city, the board of education shall levy or cause to be levied an annual tax, in addition if need be to the annual amount of taxes limited by law for school purposes, of not less than three-tenths and not to exceed five-tenths of a mill on all the taxable property within such city and school district, to be called "a public library fund," which shall be certified to the county auditor of the county and placed on the tax duplicate of the county, and collected as other taxes. (93 v. 8.)

§ 177. [Disposition of tax.] (§ 4002-47.) Sec. 2. Said tax when so levied and collected shall be paid over by the treasurer

of the board of education to the treasurer of said library association, to be used only in the purchase of books, pamphlets, magazines or newspapers, and for general library expenses of said library association. (93 v. 8.)

§ 178. [**Library association to render account; shall maintain free public library; city shall maintain library if association cease to exist; may levy tax.**] (§ 4002-48.) Sec. 3. Said board of education shall require said library association to render an account as often as it shall deem proper of all taxes so received by it, and how the same have been expended. Said association shall keep up and maintain in a public place in such city a public library free to all the inhabitants thereof, and to all persons residing within said school district. Provided, further, that if said public library association shall for any cause cease to exist then all property of said association, real and personal, shall immediately become vested in the city wherein said library association is established and maintained, and that had heretofore been taxed for the purpose of maintaining the same; and it shall become the duty of said city or municipality to have the charge of and care of such property in the same manner as other property of said city, and to carry out the educational purposes for which this act was originally intended, and may, if occasion require, levy taxes for said purposes upon the personal and real property of said city, and collect the same as other taxes are now levied and collected. (93 v. 9, § 3; 95 v. 417, § 4002-48.)

§ 179. [**Tax in lieu of other taxes.**] (§ 4002-49.) Sec. 4. The tax so levied shall be in lieu of all other taxes levied for school library purposes, and no other levy shall be made for such purpose;

[**Purchase of school apparatus; levy.**] Provided, however, that nothing herein shall prohibit the board of education from purchasing all necessary philosophical or other apparatus for the schools and making necessary levies therefor. (93 v. 9.)

§ 180. [**Consolidation of libraries in Portsmouth authorized.**] (§ 4003.) In all cities which at the last federal census had, or at any subsequent federal census may have, a population of ten thousand five hundred and ninety-two, it shall be

lawful to merge any public library therein heretofore established with any other library or reading-room therein existing; but the library formed by such consolidation shall be kept open for the use of the public at all reasonable hours. (75 v. 541, § 1; 76 v. 97, § 1.)

§ 181. [Board of Portsmouth to appoint library committee.] (§ 4004.) The board of education of every such city shall, at its first regular meeting after the second Monday in June, 1879, elect by ballot three suitable persons, residents of the city, but other than members of such board, who shall be known as the library committee of the city, one to serve for one year, one for two years, and one for three years, and until their successors are duly elected and qualified, and shall, annually thereafter, elect in like manner one person with the same qualifications to serve for three years, and until his successor is elected and qualified; and any vacancy in such committee shall be filled for the unexpired term at the first regular meeting of the board held after the same occurs. (75 v. 541, § 2; 76 v. 97, § 2.)

§ 182. [Powers and duties of such committee.] (§ 4005.) Such committee shall report in writing to the board of education at least once each year, and oftener if required by the board, and shall have entire charge and control of the school library in the city with full power to make all rules and regulations for the government and regulation thereof, to employ a librarian, and such assistants and help as may be needed for its care and protection, and to require of the librarian such bond as they may deem proper for the faithful performance of his duties, and to attend to the drawing and return of books; but the salary of such librarian, and the rate of compensation of such assistants and help, shall be fixed by resolution prior to such employment. (76 v. 97, § 3.)

§ 183. [Powers and duties of library committees in Portsmouth.] (§ 4006.) For the purpose of increasing and maintaining school libraries in cities mentioned in section *four thousand and three* (§ 180) of the Revised Statutes of Ohio, and the territory thereto attached for school purposes, such library committee in such cities is authorized to annually levy

a tax of three-tenths of one mill on the dollar valuation of the taxable property of such cities aforesaid, and the territory thereto attached for school purposes, to be assessed, collected and paid in the same manner as are the school taxes of such cities, and all money appropriated or collected by tax for such library shall be expended under the direction of said library committee in the purchase of such books, pamphlets, papers, magazines, periodicals and journals, as may be deemed suitable for the public school library, and in payment of all other costs and charges, including the salaries of the librarian and assistants, that may be incurred in maintaining said libraries, the bills and payrolls for which said expenditures, shall, upon the order of the library committee, be certified by the chairman and secretary of such committee, and paid by the treasurer of the board of education of said city from such library fund. (92 v. 309; 78 v. 176; Rev. Stat. 1880; 75 v. 541, § 2; 76 v. 97, § 4.)

§ 184. [Transfer of property.] That it shall be lawful for any municipal corporation in this state to transfer by ordinance duly passed, any property, real or personal, acquired or suitable for library purposes, to the trustees of any public library for the school district within which such municipal corporation is situate, upon such lawful terms and conditions as may be agreed to between said municipal corporation and said trustees. (97 v. 334.)

The trustees of any public library in any such school district are hereby authorized and empowered to receive and accept any such transfer, and to receive and accept from any other source or acquire in any other manner, any property, real or personal, for library purposes, and use and apply the same for such purposes, and to enter into any contract relating thereto. (97 v. 334.)

See § 52, transfer of funds.

AN ACT.

§ 184a. [Trustees of township to levy tax for library.] (Sec. 1.) That the trustees of each township shall have power to levy and collect a tax not exceeding one-half mill on each dollar of the taxable property of the township, annually, and to pay the same to a private corporation or association main-

taining and furnishing a free public library for the benefit of the inhabitants of the township as and for compensation for the use and maintenance of the same, and without change or interference in the organization of such corporation or association, requiring the treasurer of such corporation or association to make an annual financial report, setting forth all the money and property which has come into its hands during the preceding year, and its disposition of the same, together with any recommendation as to its future necessities. (98 v. 47.)

Sec. 2. That the county auditor at each semi-annual collection of taxes, where a tax for library purposes has been levied by the township trustees, shall certify the amount collected from said levy for library purposes to the township clerk; and the township clerk shall forthwith draw his warrant on the township treasurer, payable to the treasurer of the library association for the amount so certified by the auditor. (98 v. 47.)

Sec. 3. That if at any time such library corporation or association ceases to exist or from any reason fails to provide a free public library as required by the provisions of this act, the books and other property accumulated from the proceeds of the levy herein authorized shall become the property of the township and be subject to the control of the trustees of the township. (98 v. 47.)

CHAPTER 9.

SCHOOLS AND ATTENDANCE ENFORCED.

SECTION.		SECTION.	
§ 185 (4007)	Sufficient elementary schools must be provided; number of weeks to be continued; graded course of study required.		required by this section.
		(4008)	Repealed.
§ 186 (4007-1)	Elementary school defined.	§ 192 (4009)	Any board of education may establish high school; discontinuance thereof.
§ 187 (4007-2)	High school defined.	§ 193 (4009-1)	Township high schools; management and control thereof; school houses, etc.; admission of pupils.
§ 188 (4007-3)	College defined.		
§ 189 (4007-4)	High schools classified; first grade; second grade; third grade.	§ 194 (4009-2)	Estimate of funds needed.
§ 190 (4007-5)	Diploma to be given to graduate of high school; certificate as to grade of school; admission without examination to professional school; exception; who eligible to take examination for admission to bar or to enter professional school; exception.	(4009-3)	Repealed.
		(4009-4)	Repealed.
		(4009-5)	Repealed.
		(4009-6)	Repealed.
		(4009-7)	Repealed.
		(4009-8)	Repealed.
		(4009-9)	Repealed.
		(4009-10)	Repealed.
		(4009-11)	Repealed.
		(4009-12)	Repealed.
		(4009-13)	Repealed.
		(4009-14)	Repealed.
§ 191 (4007-6)	Information as to character of high school to be furnished state commissioner of common schools by clerk of board of education; filed when; certificate as to grade of school; withholding approval of curriculum; penalty for failure to give information	§ 195 (4009-15)	Joint township high school; union of township and village or special districts for high school purposes; elections; control of high school; funds for maintenance of high school.
		§ 196 (4009-16)	Repeal of former laws relating to joint township and union high school and substituting new law.
		§ 197 (4010)	Schools at children's homes, or-

SECTION.		SECTION.	
	(4020-21) Repealed.	§ 230 (4022-6)	Report of principal and teachers.
	(4020-22) Repealed.	§ 231 (4022-7)	Proceedings in case of truancy; penalties.
§ 219 (4020-23)	Instruction as to effect of alcoholic drinks on the human system, required in public schools; provisions therefor.	§ 232 (4022-8)	Proceedings against juvenile disorderly persons.
§ 220 (4020-24)	Instruction of teachers; examination of teachers required; duty of commissioner of common schools.	§ 233 (4022-9)	Relief to enable child to attend school required time.
§ 221 (4020-25)	Penalty for failure to give such instruction.	§ 234 (4022-10)	As to institution for deaf and dumb or institution for the blind.
§ 222 (4021)	German language taught, how.	§ 235 (4022-11)	Penalties; jurisdiction; violations by corporations; disposition of fines collected; employment of attorney; compensation.
§ 223 (4022)	Pupils may be sent from one district to another.	§ 236 (4022-12)	Repeated violations.
§ 224 (4022a)	Attendance when pupils live over one and one-half miles from school; payment of tuition, how computed.	§ 237 (4022-13)	Sufficient school accommodations to be provided.
§ 225 (4022-1)	In what branches children must be taught; necessary time of attendance; excuse; appeal in case of refusal to excuse; penalty for failure to place child in school as herein provided.	§ 238 (4022-14)	Costs in prosecution under this act.
		(4023)	Repealed.
		(4024)	Repealed.
		(4025)	Repealed.
§ 226 (4022-2)	Employment of children under age of sixteen years; when unlawful; penalty.	§ 239 (4026)	Free school books.
§ 227 (4022-3)	Attendance of minors in certain cases; employment of such minors; penalty.	(4027)	Repealed.
§ 228 (4022-4)	Juvenile disorderly persons.	(4028)	Repealed.
§ 229 (4022-5)	Truant officers; powers and duties.	(4029)	Repealed.
		§ 240 (4029-1)	Examination for entering high school; number of examinations; when and where; preparation of questions; township commencement; county commencement; diploma.
		§ 241 (4029-2)	Compensation of examiners and contingent expenses.
		§ 242 (4029-3)	Tuition.
		§ 243 (4029-4)	What shall constitute a high school.

SECTION.		SECTION.	
	phans' asylums and infirmaries; how sustained; to be under control of trustees of institution.		districts; appointment and term of office; duties.
§ 198 (4011)	Youth may be sent to charity school at Zanesville.	§ 208 (4018)	Teachers, duties of; janitor work not required.
§ 199 (4012)	Evening schools.	§ 209 (4019)	Teachers dismissed for insufficient may institute suit.
§ 200 (4012a)	Attendance by person more than twenty-one years old.	(4020)	Repealed.
§ 201 (4013)	Who may attend school free; crediting school tax on tuition of non-resident pupils; assignment of pupils.	(4020-1)	Superseded.
§ 202 (4014)	Suspension and expulsion of pupils.	(4020-2)	Superseded.
§ 203 (4015)	Legal holidays school may be dismissed on.	(4020-3)	Superseded.
§ 204 (4015-1)	Arbor Day.	(4020-4)	Superseded.
§ 205 (4016)	School year, month and week.	(4020-5)	Superseded.
§ 206 (4017)	Control of schools vested in boards; appointees; salaries; salaries of teachers; paid during epidemic; appointments of former teachers; school director in city districts; appointment; power; duties; salary; removal; contract with employes; resignations; dismissals.	(4020-6)	Superseded.
§ 206a (6975a)	Unlawful to use influence, etc.	(4020-7)	Superseded.
§ 206b	Minimum salary; state aid to weak school.	(4020-8)	Superseded.
§ 207 (4017a)	Superintendents and teachers in city districts; appointment and term of office; duties; superintendent and teachers in other	(4020-9)	Superseded.
		§ 210 (4020-10)	Filing and preservation of copies and prices of school books.
		§ 211 (4020-11)	Maximum price; notification of publisher.
		§ 212 (4020-12)	Notices to boards; legality dependent on compliance.
		§ 213 (4020-13)	Procedure upon violation of agreement by publisher.
		§ 214 (4020-14)	Studies, etc.; shipment of books, etc.; sale to pupils; purchase from pupils; free books.
		§ 215 (4020-15)	Purchase of Howe's Historical Collections of Ohio for schools; payment.
		§ 216 (4020-16)	Care and preservation of books.
		§ 217 (4020-17)	Physical culture in schools; where.
		§ 218 (4020-18)	Manual training departments, commercial departments and kindergartens authorized.
		(4020-19)	Repealed.
		(4020-20)	Repealed.

§ 185. [Sufficient elementary schools must be provided.]

Statute. Must be Thirty-two Weeks'
What to be Considered in Lo- School.
cating.

(§ 4007.) Each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number of such youth, and shall continue each and every elementary day school so established not less than [twenty-eight] thirty-two nor more than forty weeks in each school year, and all the elementary schools within the same school district shall be continued the same length of time. And boards of education are required to prescribe a graded course of study for all schools under their control in the branches named in section 4007-1 (§ 186), of the Revised Statutes of Ohio, subject to the approval of the state commissioner of common schools. Each township board of education shall establish and maintain at least one elementary school in each sub-district under its control, unless transportation is furnished to the pupils thereof as provided by law. (97 v. 334.)

WHAT TO BE CONSIDERED IN LOCATING.—In determining the question as to how many schools are necessary in the districts, either of townships, villages or cities, three things should be carefully considered: 1. Convenience of access. 2. Economy in expenditure. 3. A proper grading and classification of the pupils, in cases where grading is possible.

Under the first item, a due regard should be had to the arrangement of the population. In some cases the geographical center of the district is not the center of population, nor will it always do utterly to disregard the rights of minorities, and place the school in the exact center of population, when this will force a respectable number of children to travel excessive distances.

There is no reason why two or more school houses or two or more school rooms may not be provided in a sub-district.

MUST BE THIRTY-TWO WEEKS' SCHOOL.—The law is absolute in its requirements to continue all schools to which public money is applied at least thirty-two weeks. The law does not limit boards of education to this period, however, and if the time is lengthened as to the schools for any portion of the inhabitants of a township district, it must be equally lengthened for all such inhabitants. This does not imply that all the

grades of a system of schools accessible to all the pupils of a district must be kept up as long as the other grades. But if the high or grammar schools for one part of the district be kept up for a given time, such grades for other parts of the district must be continued as long. See section 3967 (§ 68). That this same rule is to govern in the case of different parts of a city district, see fourth item enumerated under section 3969 (§ 70).

School regulation requiring the reading the Bible as an exercise in school is valid. (*Nessle v. Hum*, 1 N. P., 140.)

See § 92, reading Bible in public schools.

§ 186. [Elementary school defined.] (§4007-1.) An elementary school is hereby defined as a school in which instruction and training are given in spelling, reading, writing, arithmetic, English language, English grammar and composition, geography, history of the United States, including civil government, physiology and hygiene; but nothing herein contained shall be construed as abridging the power of boards of education to cause instruction and training to be given in vocal music, drawing, elementary algebra, the elements of agriculture and other branches which they may deem advisable for the best interests of the schools under their charge. (97 v. 334.)

§ 187. [High school defined.] (§ 4007-2.) A high school is hereby defined as a school of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or mental science, ancient or modern foreign languages, or both, commercial and industrial branches, or such of the above named branches as the length of its curriculum may make possible, and such other branches of higher grade than those to be taught in the elementary schools, and such advanced studies and advanced reviews of the common branches as the board of education may direct. (95 v. 115.)

See § 243 (§ 4029-4).

§ 188. [College defined.] (§ 4007-3.) A college is hereby defined as a school of a higher grade than a high school, in which instruction in the high school branches is carried be-

yond the scope of the high school and other advanced studies are pursued, or a school in which special, technical or professional studies are pursued, and which may, when legally organized, have the right to confer degrees in agreement with the terms of the law regulating its practices or its charter; or in the want of legislative direction, in agreement with the practices of the better institutions of learning of their respective kinds in the United States. (95 v. 115.)

§ 189. [**High schools classified.**] (§ 4007-4.) The high schools of the state of Ohio shall be classified into schools of the first, second, and third grades; and all courses of study offered in such high school shall be in branches enumerated in section 4007-2 (§ 187), of the Revised Statutes of Ohio.

[**First grade.**] A high school of the first grade shall be a school in which the courses offered shall cover a period of not less than four years, of not less than thirty-two weeks each, in which not less than sixteen courses shall be required for graduation;

[**Second grade.**] a high school of the second grade shall cover a period of not less than three years, of not less than thirty-two weeks each, in which not less than twelve courses of study shall be required for graduation;

[**Third grade.**] a high school of the third grade shall cover a period of not less than two years, of not less than twenty-eight weeks each, in which not less than eight courses of study shall be required for graduation, and all public schools of a less grade shall be denominated as elementary schools. A course of study shall consist of not less than four recitations a week continued throughout the school year. (95 v. 115.)

§ 190. [**Diploma to be given to graduate of high school.**] (§ 4007-5.) A diploma shall be granted by the board of education to any one completing the curriculum in any high school, which diploma shall state the grade of the high school issuing the said diploma as certified by the state commissioner of common schools, and shall be signed by the president and clerk of the board of education, the superintendent and the principal of the high school, if such there be, and shall bear the date of its issue.

[Certificate as to grade of school.] A certificate shall also be issued to the holder of each diploma in which shall be stated the grade of the high school, the names and extent of the studies pursued and the length of time given to each said study to be certified to in the same manner as set forth for a diploma.

[Admission without examination to professional school.] And any holder of a diploma from a high school of the first grade shall be entitled to a certificate of admission without examination to any college of law, medicine, dentistry, or pharmacy in the state of Ohio, when the holder thereof shall have completed such courses in science and language as shall be prescribed by the legally constituted authorities regulating the entrance requirements of said college; except such privately endowed institutions which may require a higher standard for entrance examinations than herein provided.

[Who eligible to take examination for admission to bar or to enter professional school.] And any holder of a diploma from any grade of high school or of a teacher's certificate from a county or city board of teachers' examiners, when such holder has pursued his studies under private tutorage or in an office, shall be eligible to take the examination for admission to the practice of law or to take the examination prescribed to enter a college of law, medicine, dentistry, or pharmacy; except such privately endowed institutions which may require a higher standard for entrance examinations than herein provided. (95 v. 115.)

§ 191. **[Information as to character of high school to be furnished state commissioner of common schools by clerk of board of education.]** (§ 4007-6.) It shall be the duty of the clerk of the board of education of each district in which a high school is established and maintained to furnish to the state commissioner of common schools definite and accurate information concerning the length of time necessary for the completion of the high school curriculum or curriculums, the courses of instruction offered therein, and such other information as said commissioner may require in relation to the high school work of the district, and in the form and manner he may prescribe.

[Filed, when.] Said information shall be filed not later than the first day of September, 1902, and as high schools are here-

after established or any changes made in the curriculums, such establishment or changes with full information must be immediately reported as above provided, and it shall be the duty of the said state commissioner of common schools, upon examination of the information thus filed, or after personal inspection of work done if he shall deem the same advisable, or both,

[**Certificate as to grade of school.**] to determine the grade of each such high school and to certify, under the seal of his office, to the clerk of the board of education his finding as to the grade of the high school maintained by such board of education. The said commissioner is also authorized to withhold his approval of any curriculum, when it shall appear to him that the same does not comply with the legal and reasonable requirements, and when it shall appear that any curriculum, which has already been approved, has been so modified as to change the grade of the high school, either by advancing or reducing the grade thereof, he shall certify his finding, and all diplomas issued thereafter shall bear the grade so designated by him.

[**Penalty for failure to give information required by this section.**] And after the first day of February, 1903, no school then maintained shall be considered a high school that has not furnished the information and received the certificate as provided above and shall not be entitled to the privileges and exceptions provided by law for high schools. (95 v. 117.)

Sec. 4008. Repealed.

§ 192. [**Any board of education may establish high school.**] (§ 4009.) Any board of education may establish one or more high schools, whenever it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending the same, or for the conduct and welfare of the educational interests of the district,

[**Discontinuance thereof.**] and such school, or schools when so established, shall not be discontinued under three years from the time of the establishment thereof, except by a vote of three-fourths of all the members of the board of education of the district, and at a regular meeting. (95 v. 115.)

COMMENTS.—One of the most encouraging features of the development of our public school system is the rapid growth of the higher education, particularly in the township districts. The establishment of township high schools is going forward in increasing numbers with each succeeding year. The people seem to be growing into the conviction that the higher education is a necessity in a republic, and that the cheapest and best place for their children to obtain this education is at home under their own eye.

This authority applies to all boards of education, including township boards. If such higher grade of school is in a sub-district, and exclusively for the use of such sub-district, it is, like primary schools so situated, under the provisions of section 4018 (§ 208). If it is designed for the attendance of children from all of the sub-districts, under a general rule that all of a certain grade of scholarship may attend it, without special assignment of individual pupils thereto, it is practically a township high school, and under the management of a township board of education, though it is, of necessity, located within the territory of some sub-district. This is evident from the fact that the full control of the public schools of each district is, under section 4017 (§ 206), in the hands of the board of education of such district, except *only* as provided in section 4018 (§ 208).

An order for the payment of a teacher of a township high school should be signed by the president and countersigned by the clerk of the board of education. See section 4047 (§ 267).

Of course the superintendent of the schools of a township is entitled, under the direction of the township board, to exercise the same authority that is exercised by a superintendent of city schools. (Ohio School Law.)

A township high school does not pass to a village incorporated out of the territory including it by reason of a general saving clause in the act of 1873. Board of Education v. Bd. of Education, 41 O. S., 680.)

Change of territory organizing a separate school district does not entitle the new district to seize on property within it that had been set apart by the township board for a higher school than a primary, although this would be within the letter of R. S., section 3972 (§ 80), which relates to the subject. Board of Education v. Board of Education, 46 O. S., 595.)

This section fully authorizes boards of education to establish high schools without submitting the question to a vote of the electors of the district, unless it should be found necessary to levy a tax in excess of the maximum allowed by law and issue bonds; in which case an election is required. See section 3901 (§ 99).

§ 193. [**Township high schools; management and control thereof.**] (§ 4009-1.) Whenever a township board of education establishes and maintains a high school or high schools within the district under its control, it shall have the management and control of such school or schools with full power in respect to such school or schools to employ and dismiss teachers, and to give certificates of such employment, and for services rendered, directed to the township clerk.

[**School houses, etc.**] And the township board of education shall build, repair, add to and furnish the necessary school houses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as may be deemed proper.

[**Admission of pupils.**] Said board of education shall have full power to regulate and control the admission of pupils from the elementary schools under its charge to such high school or high schools, according to age and attainments, and may admit adults over twenty-one years of age, and pupils from other districts on such terms and under such rules as it may adopt, and shall maintain such high school or high schools not less than twenty-eight nor more than forty weeks in any school year. (88 v. 484, § 1; 95 v. 117, § 4009-1.)

§ 194. [**Estimate of funds needed.**] (§ 4009-2.) In townships where a high school or high schools are established, or may be established, by the township board of education, the board shall annually determine by estimate, as near as practicable, the entire amount of money necessary to be expended in the township for school and school house purposes, including the sustaining of teachers in such high schools, the prolonging of the terms of the several elementary schools of the township after the state funds shall have been exhausted, the erecting, repairing and furnishing of school houses, and any other school purposes not exceeding in any one year ten mills on the dollar of the taxable property of the township, which amount shall be certified in writing to the county auditor, as required by section 3960 (§ 63), of the Revised Statutes of Ohio. (88 v. 484, § 2; 95 v. 117, § 4009-2.)

Sec. 4009-3. Repealed April 25, 1904.

Sec. 4009-4. Repealed April 25, 1904.

Sec. 4009-5.	Repealed April 25, 1904.
Sec. 4009-6.	Repealed April 25, 1904.
Sec. 4009-7.	Repealed April 25, 1904.
Sec. 4009-8.	Repealed April 25, 1904.
Sec. 4009-9.	Repealed April 25, 1904.
Sec. 4009-10.	Repealed April 25, 1904.
Sec. 4009-11.	Repealed April 25, 1904.
Sec. 4009-12.	Repealed April 25, 1904.
Sec. 4009-13.	Repealed April 25, 1904.
Sec. 4009-14.	Repealed April 25, 1904.

§ 195. [Township high school district, establishment of by boards of education.] (§ 4009-15.) The boards of education of two adjoining township school districts, or of a township district and of a village or special school district situated partially or wholly within the township, may, by a majority vote of the full membership of each of said boards, unite said districts for high school purposes.

[Question of tax levy for such purpose must be submitted to vote.] And each board may submit the question of levying a tax on the property in their respective districts, for the purpose of purchasing a site and erecting a building, and may issue bonds, as is provided for in section thirty-nine hundred and [ninety-one,] sixty-one, thirty-nine hundred and [ninety-two,] sixty-two and thirty-nine hundred and [ninety-three] sixty-three (§ 64), of the Revised Statutes of Ohio, but said question of tax levy must carry in both districts before it shall become operative in either.

[When vote not necessary.] If said boards of education have sufficient money in the treasury to purchase said site and erect said building, or if there is a suitable building in either district owned by the board of education that can be used for a high school building, it shall not be necessary to submit the proposition to a vote, and the boards are authorized to appropriate money from their funds for this purpose.

[Such high school shall be under control of board of education of district in which school house is located.] Any high school so established shall be under the management of the board of education of the district in which the school house is located, and shall be free to all youth of school age within both districts, subject to such rules and regulations as may be adopted by the board of education having control of the school in regard to the qualifications in scholarship requisite

for admission, such rules and regulations to be of uniform operation throughout both districts.

[**How funds provided.**] The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, the same to be placed in a separate fund in the treasury of the board of education having control of the school and paid out by action of said board, but only for the purposes of maintaining said school. (97 v. 334.)

§ 196. [**Joint township high school districts, etc., heretofore created, abolished; how schools therein maintained and conducted.**] (§ 4009-16.) Joint township high school districts heretofore established as provided for in section 4009-15 (§ 195) to 4009-20 inclusive, of the Revised Statutes of Ohio, as they existed prior to the passage of this act, are hereby abolished and the schools in said districts shall be hereafter conducted as provided in section 4009-15 (§ 195) of the Revised Statutes of Ohio, as contained herein. Boards of education of special districts for high school purposes, as provided in section 4009b of the Revised Statutes of Ohio, as it existed prior to the passage of this act, are hereby abolished and the high schools in said district shall hereafter be conducted and maintained as provided in section 4009-15 (§ 195) of the Revised Statutes of Ohio as herein contained. (97 v. 334.)

Form of Assignment of Scholars to Central High School.

The board of education of township, county, Ohio, met this day and assigned the following scholars to the high school:

From sub-district No.:

A. B.,

C. D.,

Etc.

From sub-district No.:

E. F.,

G. H.,

Etc.

(The assignment from each sub-district being specified in like manner.)

By order of the township board.

.....
Clerk.

§ 197. [**Schools at children's homes, orphans' asylums and infirmaries; how sustained.**] (§ 4010.) The board of any district in which a children's home or orphans' asylum is or may be established by law, or in which a county infirmary is or may be established, shall, when requested by the board of trustees of such children's home, orphans' asylum or the directors of such infirmary, establish in such home or infirmary a separate school, so as to afford to the children therein, as far as practicable, the advantages and privileges of a common school education; such schools at infirmaries shall be continued in operation each year until the full share of all the school funds of the districts belonging to such children, on the basis of enumeration, is expended, and at such homes and asylums not less than forty-four weeks, if the distributive share of school funds to which such school at any such home or asylum is entitled by the enumeration of children in the institution is not sufficient to continue the schools the length of time hereby required, the deficiency shall be paid out of the funds of the institution; all schools so established in any such home, asylum or infirmary, shall be under the control and management of the respective boards of trustees or directors of such institution, which boards of trustees or directors shall, in the control and management of such schools, as far as practicable, be subject to the same laws that boards of education and other school officers are, who have charge of the common schools of such district; in the establishment of such schools the commissioners of the county, in which such children's home, orphans' asylum or county infirmary is established, shall provide the necessary school room or rooms, furniture, fuel, apparatus and books, the cost of which furniture, fuel, apparatus and books, for the schools of such homes, infirmaries and asylums, shall be paid out of the funds provided for such institutions; and the board of education shall incur no expense in supporting such schools. (75 v. 513, § 50; 76 v. 75, § 1; 80 v. 217.)

§ 198. [**Youth may be sent to charity school at Zanesville.**] (§ 4011.) The board of education of the city of Zanesville may contract with the trustees having the management of any fund which has been provided by gift, devise, or bequest for the establishment or support of a school or schools for poor children therein, for the admission to any such school of children resi-

dent in the city, and pay to such trustees out of the school funds under its control, such tuition fee as may be agreed upon for each scholar so admitted, but not entitled to admission according to the terms of such gift, devise or bequest, and also provide for such right of visitation or control of such school or schools by the board as may be agreed upon; such school or schools shall be kept at the least equal in grade and efficiency to the corresponding public schools of the state, and every such contract shall expire in three years from the time of its execution, unless renewed or extended by agreement; but this section shall in no manner apply to any school or schools supported or controlled by any church, congregation, sect or religious denomination or association of any kind. (75 v, 530, § 1.)

§ 199. [**Evening schools.**] (§ 4012.) In any township, special, village, or city district, or part thereof, parents or guardians of youth of school age may petition the board of education to organize an evening school. The petition shall contain the names of not less than twenty-five youth of school age who will attend such school, and who for reasons satisfactory to the board are prevented from attending day school. Upon receiving such petition the board of education shall provide and furnish a suitable room for the evening school and employ a competent person who holds a regularly issued teacher's certificate, to teach it. Such board may discontinue any such evening school, when the average evening attendance for any month falls below twelve. (96 v. 116; 72 v. 29, § 51; S. & C., 1359.)

§ 200. [**Attendance by persons more than twenty-one years old.**] (§ 4012a.) Any person more than twenty-one years old may be permitted to attend evening school upon such terms and upon payment of such tuition as the board of education may prescribe. (90 v. 117.)

§ 201. [**Who may be admitted to school free.**] (§ 4013.) The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, including children of proper age who are or may be inmates of a county or

district children's home located in any such school district, at the discretion of the board of education of said school district; provided that all youth of school age living apart from their parents or guardians and who work to support themselves by their own labor, shall be entitled to attend school free in the district in which they are employed.

[**Nonresident pupils.**] Each board of education may admit other persons upon such terms or upon the payment of such tuition as it may prescribe;

[**Crediting of school tax on tuition.**] Provided, that when a youth between the age of six and twenty-one years or the parent of such youth owns property in a school district in which he does not reside and said youth attends the schools of said district, the amount of school tax paid on such property shall be credited on the tuition of said pupil.

[**Assignment of pupils.**] Boards of education are authorized to make such an assignment of the youth of their respective districts to the school established by them as will in their opinion best promote the interests of education in their districts. (97 v. 334.)

PUPILS TO ATTEND IN THEIR OWN SUB-DISTRICT.—Children can not, as a matter of right, attend the schools of sub-districts in which they do not reside and to which they have not been assigned by the board of education. The local directors are given no jurisdiction in such matters.

By comparing this section with section 4030 (§ 244), it will be seen they do not correspond in one particular. The latter says there shall be "an enumeration of all *unmarried* youth," while in this section there is no limitation to free admission into school, except as to age. It was doubtless intended by the General Assembly that the two sections should agree on this point. That they do not is owing, it may be presumed, to an inadvertence.

Under this section persons under twenty-one years of age, though married, are entitled to all the privileges of the schools of the district in which they reside, notwithstanding they have not been enumerated in the school census, and in consequence can draw no part of the state school fund.

Under the general law, sections 3898 (§ 25), 3916 (§ 33), etc., boards of education are elected by the qualified electors of their district. This section does not change this provision. Hence, though they may send their children to the school, they can not vote in any district except where their home is situated.

No regulation can be made under this section that does not apply to all children irrespective of race or color. (Board of Education v. State, 45 O. S., 535.)

Attending school in other districts if nearer; see sections 4022 (§ 223), 4022a (§ 224).

The children inmates of the German Protestant Asylum of Cincinnati, are not "children, wards, or apprentices of actual residents" in the school district within which said asylum is located, and therefore, under the act of Feb. 21, 1849, are not entitled to gratuitous admission to the privileges of the public schools of said district. (The State v. Directors of School District No. 14, 10 O. S., 448.)

That portion of the above section relating to children living apart from their parents or guardians, who support themselves by their own labor, does not apply where child moves into a district in which his parents do not live, with the express purpose of attending school, and incidentally works for his board and lodging. In such cases tuition can be charged.

RESIDENCE OF PUPIL.—As a general rule a minor child is entitled to attend the public schools in which it has its actual residence, if its residence there is bona fide and not for the sole purpose of attending the school, and this would be true whether the minor child resided with its parents or some other person. State v. Thayer, 74 Wis., 48. However, if the minor was apprenticed to a person in a certain district for the sole purpose of giving the minor the benefit of the school of that district, it is held that he can not attend such schools. School District No. 1 v. Bragdon, 23 N. H., 507.

And if a farmer in order to entitle his child to attend the public schools of the city took a house in the city and moved in each fall or winter, and moved back on his farm in the spring, it is held that this is not such legal residence as would entitle a child to attend the city schools, Gardner v. Fargo, Board of Education, 5 Dak., 59; and the same rule would be applied where a child was sent to board with a person who resided within the school district. (People v. Board of Education, 26 Ill. App., 476.)

§ 202. [Suspension and expulsion of pupils.] (§ 4014.) No pupil shall be expelled from school by a superintendent or teacher except for such time as may be necessary to convene the board of education, and no pupil shall be expelled except by a vote of two-thirds of such board, and not until the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against the same; and no pupil shall be suspended or expelled from any school beyond the current term thereof. (70 v. 195, § 71; 89 v. 96.)

The father of a child entitled to the benefits of the public school of the sub-district of his residence may maintain an action against the teacher of the school and the directors of the sub-district for damages for wrongfully expelling the child from school. (*Roe v. Deming*, 21 O. S., 666.)

Since the above decision was rendered the power to expel has been taken from the local directors and conferred upon the board of education.

In many cases of incorrigibility, proceedings can be instituted against the offender as provided by section 4022-8 (§ 232), as a juvenile disorderly person (section 4022-4 [§ 228]), instead of expulsion by the board, as it is to the interest of the public to keep the child in school.

See § 92 as to rules board may make.

SUSPENSION, ETC., GENERALLY.—In the following instances the exercise of power has been sustained: Suspending pupil for refusing to disclose the name of offending pupil, *Board v. Helston*, 32 Ill. App., 300; for tardiness, *Russell v. Linnfield*, 116 Mass., 366; *Bendick v. Babcock*, 31 Iowa, 562; for failure to use text-books, *Spiller v. Woburn*, 12 Allen (Mass.), 127; *McCormick v. Burt*, 95 Ill., 266; *Donahue v. Richards*, 38 Me., 379; *Kidder v. Chellis*, 59 N. H., 473; *Guernsey v. Pitkin*, 32 Vt., 226; *Sewell v. Board of Education*, 29 Ohio St., 89; for absence, *Ferriter v. Tyler*, 48 Vt., 444; *King v. Jefferson City School Board*, 71 Mo., 628; *Churchill v. Fewkes*, 13 Brad. (Ill.), 520; for misconduct, *Stevens v. Fassett*, 27 Me., 266; *Larock v. Putnam*, 111 Mass., 499; *Hodgkins v. Rockport*, 105 Mass., 476; *State v. Williams*, 27 Vt., 755; suspension of pupil by officer, *Stevens v. Fassett*, 27 Me., 266; *Larock v. Putnam*, 111 Mass., 499; *Hodgkins v. Rockport*, 105 Mass., 476; *State v. Williams*, 27 Vt., 755; suspension of pupil by teacher, where officer opposed the teacher, *Scott v. School District*, 46 Vt., 452; expelling for immorality, *Sherman v. Inhabitants*, 8 Cush. (Mass.), 163; corporal punishment for misconduct, *State v. Pendergrass*, 2 Dev. & Batt. (N. C.), 365; *Sheehan v. Sturgis*, 53 Conn., 481; *Dunnehoffer v. State*, 69 Ind., 295; *State v. Mizner*, 45 Iowa, 248; *Davis v. Boston*, 133 Mass., 103; *Patterson v. Nutter*, 78 Me., 509; *Deskins v. Gore*, 85 Mo., 485; the teacher refusing to teach pupil has been held not liable for damages, *Spear v. Cummings*, 24 Pick. (Mass.), 224; suspending teacher for immorality was sustained, *McClellan v. Board*, 15 Mo. App., 362.

In the following instances the exercise of authority has not been sustained: For barring out tardy pupil, *Thompson v. Beaver*, 63 Ill., 356; for suspending pupil for failure to use text-books required, *Trustees v. People*, 87 Ill., 303; *Morrow v. Wood*, 35 Wis., 59; *Rulison v. Post*, 79 Ill., 567; for suspending

for attending a party, *Dritt v. Snodgrass*, 66 Mo., 286; for reflecting on the director by newspaper article, *Murphy v. Directors*, 30 Iowa, 429; for suspending for not paying for broken window, *Perkins v. Directors*, 56 Iowa, 476; for suspending for using tobacco, the director being opposed to teacher, *Parker v. School District*, 5 Lea (Tenn.), 525; for manslaughter of slave, *State v. Harris*, 63 N. C., 7; corporal punishment, for failing to use text-book, *State v. Mizner*, 50 Iowa, 145; for not paying for broken window, *State v. Vanderbuilt* (Ind.), 18 N. E., 266; for misconduct, *Com. v. Randall*, 4 Gray (Mass.), 36; *Boyd v. State*, 88 Ala., 169; *Cooper v. McJunkin*, 4 Ind., 290; *Hathaway v. Rice*, 19 Vt., 102; for accidentally adding aloud, *Anderson v. State*, 3 Head (Tenn.), 455.

§ 203. [Legal holidays; dismissal of schools on holidays.] (§ 4015.) Teachers employed in the public schools may dismiss their schools, without forfeiture of pay, on the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the twenty-fifth day of December, and on [any] the day set apart by the proclamation of the president of the United States or [the] governor of this state as a day of fast, thanksgiving or mourning. (97 v. 334.)

§ 204. [Arbor day.] (§ 4015-1.) That the governor of said state shall, not later than April appoint and set apart one day in the spring season of each year, as a day on which those in charge of the public schools and institutions of learning under state control, or state patronage, shall, for at least two hours, give information to the pupils and students concerning the value and interest of forestry, and the duty of the public to protect the birds thereof, and also for planting forest trees. Said day shall be known as Arbor day. (95 v. 38.)

The state school commissioner must get out annually as soon as possible after the governor has set aside a day for Arbor day a manual of exercises for that day. (Sec. 14, Act of 1894. 97 v. 471 (6960b).)

Hiring teachers by the day does not affect their rights under this section.

It is held in Michigan that "school management should always conform to those descent usages which recognize the pro-

priety of omitting to hold exercises on recognized holidays. All contracts for teaching during periods mentioned must be construed of necessity as subject to such days, and there can be no penalty laid upon such observances, in the way of forfeitures or deduction of wages." (39 Mich. 484.)

For other holidays, see sections 4046-1, 4046-2, R. S.

Boards of education can not compel teachers to make up for time lost on the above-mentioned days.

See § 312 (§ 4091), as to attending teachers' institute.

ENTITLED TO PAY IF SCHOOL CLOSED BY REASON OF EPIDEMIC, ETC.—The general rule, with which the decisions in *McKay v. Barnett*, 50 L. R. A., 371, is in harmony, is that no deduction can be made from a teacher's salary where a school is closed during the term on account of epidemics, destruction of building or holidays, unless special provision is made in the contract which will allow such deduction to be made. *Libby v. Douglass*, 175 Mass., 128, 55 N. E., 808; *School Town v. Gray*, 10 Ind. App., 50 L. R. A., 428, 37 N. E., 1059; *Randolph v. Sanders*, 22 Tex. Civ. App., 331, 54 N. W., 621; *Dewey v. Union School District*, 43 Mich., 480, 5 N. W., 646; *Mason v. School District No. 14*, 20 Vt., 487; *School Directors v. Crews*, 23 Ill. App., 367; *Charleston School Township v. Hay*, 74 Ind., 127; *Corn v. Board of Education*, 39 Ill. App., 446; *Smith v. School District No. 2*, 69 Mich., 589, 37 N. W., 567; *Cashen v. School District No. 12*, 50 Vt., 30; *Bromley v. School District No. 5*, 47 Vt., 381; *Holloway v. School District No. 9*, 62 Mich., 153, 28 N. W., 764; *School District No. 4 v. Gage*, 39 Mich., 484, 33 Am. Rep., 421.

§ 205. [School year, month and week.] (§ 4016.) The school year shall begin on the first day of September of each year, and close on the thirty-first day of August of the succeeding year; and a school week shall consist of five days, and a school month of four school weeks. (70 v. 215, § 70; 72 v. 181, § 6.)

MAKING UP LOST TIME ON SATURDAYS AND HOLIDAYS.—Teachers have no right, without express authority of the board of education to make up lost time by teaching on Saturday or on a holiday. The custom is so well established of keeping the school in session the five working days of each week exclusive of Saturday, and of dismissing on the holidays named, that to change this custom would manifestly require action by the board. As the law does not prescribe the days of the week to be taught, the board may, under section 3985 (§ 92), authorize the intermission of school on Monday or any

other day most convenient to the inhabitants. In a few districts in Ohio, there is no session on Monday.

§ 206. [**Control of school vested in boards; appointees; salaries.**] (§ 4017.) Each board of education shall have the management and control of all the public schools of whatever name or character in the district, with full power to appoint a superintendent of the public schools, truant officers, and janitors and fix their salaries; and, if deemed essential for the best interests of the schools of the district, the board may, under proper rules and regulations, appoint a superintendent of buildings, and such other employes as the board may deem necessary, and fix their salaries; and each board shall fix the salaries of all teachers, which salaries may be increased, but shall not be diminished during the term for which the appointment is made, and teachers shall be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity.

[**Terms.**] But no person shall be appointed as a teacher for a term longer than four school years, nor for a less term than one year except to fill an unexpired term, the term to begin within four months of the date of the appointment, provided that in making appointments teachers in the actual employ of the board shall be first considered before new teachers are chosen in their stead.

[**In city district may appoint a director of schools; his powers, duties, compensation, etc.**] A board of education in a city district may, at its discretion, elect a director of schools, who shall serve as such for the term of two years, unless earlier removed as hereinafter provided, and any vacancy in this office shall be filled for the unexpired term of such director of schools. As director of schools, he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued shall be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with said board shall be fully and faithfully performed. Except teachers, assistant teachers, supervisors, principals, superintendent of instruction, clerk of the board of education, he shall have the appointment subject to the approval and confirmation of the board of all employes, and may discharge the same. He shall have

the care and custody of all property of the school district, real and personal, except moneys. He shall oversee the construction of buildings, in the process of erection, and the repairs of the same. He shall advertise for bids and purchase all supplies and equipments authorized by the board. He shall report to the board monthly, and oftener if required, as to all matters under his supervision, and report to the board a statement of its accounts, exhibiting the revenues, receipts, disbursements, assets and liabilities of the board, the sources from which the revenues and funds are derived, and in what manner the same have been disbursed. He shall keep accurate account of taxes levied for school purposes, and all moneys due to, received and disbursed by the board; also, of all assets and liabilities and all appropriations made by the board, and shall receive and preserve all vouchers for payments and disbursements made to or by the board. He shall issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until such has been approved by the board, and the pay roll for teachers, assistant teachers and supervisors shall be countersigned by the superintendent of instruction. He shall attend all meetings of the board, and perform all of its executive functions not hereinbefore excepted in defining the duties of the director of schools. He shall devote such portion of his time to the duties of his office as may be required by the board of education at or before his election, and shall give a bond for the faithful discharge of his duties as director of schools, in such sum as the board may determine; his sureties to be approved by the board, which bond shall be deposited with the president of the board within ten days after his appointment. He shall receive such compensation, not exceeding \$5,000 per annum. as may be fixed by the board before his election, which compensation shall not be changed during his term of office.

[**May suspend or remove director.**] The board of education may, at any time, by a two-thirds vote for cause, suspend or remove the director of schools, but such suspension or removal shall not be made unless the charges are preferred in writing, and an opportunity afforded to bring all offered pertinent

testimony in as a defense, which testimony shall be received and considered by the board and made a part of the records.

[**Appointees; clerk's duty to notify.**] Upon the appointment of any person to any position under the control of the board of education, it shall be the duty of the clerk promptly to notify such person verbally or in writing of the appointment and the conditions thereof and request and secure from such person within a reasonable time to be determined by the board, his acceptance or rejection of the appointment thus made, and an acceptance of such appointment within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, shall expire, or the appointee be dismissed for cause.

[**Resignations.**] All resignations or requests for release from contract by teachers, superintendents, or employes, shall be promptly considered by the board, but no resignation or release shall become effective except by the consent of the board.

[**Dismissals.**] Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality, or improper conduct; but no teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee thereof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal. (97 v. 334.)

Board to Enforce Necessary Rules.

Employment of Teacher.

Notice to Teacher of His Election.

Must be Qualified to Teach, etc.

Form of Teachers' Contract.

Miscellaneous Matters Relating to Compensation.

Miscellaneous Matters Relating to Contract.

Attachment of Teacher's Wages.

Suspension of Director.

Director of Schools in City.

Charge for Removal of Teacher.

BOARD TO ENFORCE NECESSARY RULES.—Boards of education are authorized to adopt and enforce necessary rules and regulations for the government of schools under their management and control.

See 92 v. 202, as to reasonable rules.

Where instruction in rhetoric was given in any grade or department of such schools, and one of the rules adopted by the board for the government of the pupils therein provided that if any pupil should fail to be prepared with rhetorical exercise at the time appointed therefor, he or she should, unless excused on account of sickness or other reasonable cause, be immediately suspended from such department. Held that the rule was reasonable. Where the teacher of such department, with the consent of the board, for a failure to comply with the rule, or to offer any excuse therefor, suspended a pupil, until he should comply with the rule or offer a reasonable excuse for his non-compliance, neither the board of education nor the teacher is liable for damages therefor. (*Sewell v. Board of Education*, 29 O. S., 89.)

EMPLOYMENT OF TEACHER.—Perhaps the most important duty the board of education has to perform is the selection and election of teachers. All names should be submitted to the committee on teachers with whatever recommendations may be desired to be submitted. This committee should make a careful examination of the merits of the applicants. They should have proof that the applicants are qualified and have certificates. This committee should make a report. Upon the vote of teachers, the roll must be called, and an aye and nay vote taken, and a majority of all the members of the board will be necessary to elect, section 89 (§ 3982 R. S.). At the same time the length of time should be determined and the salary fixed. All these proceedings must be made a matter of record.

See § 86 (§ 3978), as to special meetings.

After the teacher has been elected, the clerk must notify him, either verbally or in writing. It is advisable to do this in writing, and may be in the following form:

Notice to Teacher of His Election, etc.

To

Sir:—You are hereby notified that at a meeting of the board of education of school district, held on, 190..., you were duly elected to teach the school for the period of months, commencing on, at a salary of \$..... per month.

You will please notify me of your acceptance of the same by calling at my office within days from this date and entering into a written contract for the same.

(Date.)

.....
Clerk of the Board of Education of School District.

The teacher must have a certificate to teach the required branches, section 4074 (§ 295), must be qualified to teach, and legally elected.

It will be observed that the teacher is to be employed for not less than one year nor more than four years, unless for an unexpired term. This provision is mandatory, and is intended to prevent the practice so frequently indulged in by boards of education, of changing teachers during a school year. There is no question but what the efficiency of our public schools will be greatly enhanced by the enforcement of this provision. (Att'y Genl's opinion, 1904.) Any other contract is invalid, but the teacher might collect for services performed under said contract. (Att'y Genl's opinion, 1904.) Also the applications of old teachers are to be considered first. This does not prevent the board from exercising its discretion in selecting teachers.

The salary of the teacher likewise can not be diminished. If the teacher has no certificate the clerk can not issue an order for the payment of his salary. Sec. 4051 (§ 271).

The teacher must be elected in the manner the law provides, and comply with all proper rules in reference thereto or he may be in danger of not being able to collect his salary.

No teacher can be employed except at a *meeting* of the board of education, and by a majority of the board. If the meeting is a special one, each member must have been notified of the time and place of holding it. If a teacher goes from member to member of the board, and gets their individual assent to his employment, on certain terms, in their district, this will not constitute a legal contract.

The assent of both parties must be given to a contract to make it binding. A resolution passed by a board of education, engaging the services of a person in any capacity, may be withdrawn at any time before the person accepts. (40 Mich., 84.)

Even if time be given for the answer, and no consideration for this delay be paid, the proposal may be withdrawn at any time before acceptance. A letter mailed or a telegram sent determines the time acceptance is completed and the contract sealed. (Pollock on Contracts, 8.)

The passage of a resolution to employ a certain teacher, notice sent to him, and the party accepting and entering upon his duties, constitutes a valid contract between the school board and the teacher. (12 C. C., 249.)

Illegal provisions in a contract to employ a teacher, which are separate from the legal part and are not performed, do not invalidate his right to recover his salary, as where he was employed at a certain salary, with a provision that if he could not do the work alone he should have power to employ assistance at his own expense, but he performed the service without an assistant. (29 O. S., 161.)

Form of Teacher’s Contract.

An agreement entered into between, of, county, Ohio, and the board of education of school district in county, Ohio; the said hereby agrees to teach in the public schools of said district for a term of months, and also agrees to abide by and maintain the rules and regulations adopted by said board for the government of said schools of said school district. And in consideration of such services, the said board of education agrees to pay the said the sum of dollars, payable monthly at the office of the treasurer of the board of education.

Entered into this day of, 19..

....., Teacher.
....., President.
....., Clerk.

Any special provisions may easily be inserted.

MISCELLANEOUS MATTERS RELATING TO TEACHER’S COMPENSATION.—If a teacher is engaged for a specific term and discharged without cause, he can recover, and the measure of damages is ordinarily the amount of stipulated wages, but this may be reduced by proof of ability to earn from other sources (*Sch. Dist. v. Hale*, 15 Col., 367). If a teacher was dismissed for cause and retained forcible possession of the school house and continued to teach, he could not recover anything after the date of his dismissal (*Pierce v. Beck*, 61 Ga., 413). It is ordinarily no defense to an action for a teacher’s wages under a contract, that there is no money on hand (*Harrison v. McGregor*, 96 Ind., 185). If the treasurer has money belonging to the district and refuses to pay it over on a proper order, he is personally liable (*Edson v. Hayden*, 18 Wis., 627). If a teacher leaves, on being notified that he did not give satisfaction, he can not recover for the remainder of the term, for his leaving would be construed as a voluntary act on his part (*Frazier v. Sch. Dist.*, 24 Mo. App., 250). The wrongful exclusion of a pupil from the school by a teacher under the direction of the board does not defeat his right to wages (*State v. Blain*, 36 Ohio St., 429). As a matter of course teachers can not draw pay from public funds unless the school taught was a public school (*Ussery v. Laredo*, 65 Tex., 406).

MISCELLANEOUS MATTERS RELATING TO CONTRACT.—Teachers can not be employed for a longer period than allowed by law (*Golden v. N. O. Sch. D.*, 34 La. Ann., 354; *Sch. Dirs. v. Hart*, 4 Ill. App., 224); and unless permitted by statute, no teacher can be employed beyond the expiration of the term of the board of education (*Taylor v. Sch. C.*, 5 Jones (N. C.) L., 98; *Stevenson v. Sch. Dirs.*, 87 Ill., 255); and contract made by members of the board when the board is not in session and afterwards approved at a special session of the board, is valid (*Town of Milford v. Powner*, 126 Ind., 528). It seems that a contract can not be annulled by the subsequent action of the

school board in abolishing the department in which the teacher was engaged to teach (Sch. T. Milford v. Zeigler (Ind.), 27 N. E., 303). If the board is exercising the functions of the board of education for the district, although not properly in office, they will be considered officers *de facto*, and the contract made with the teacher is binding (Sch. T. Milford v. Ziegler (Ind.), 27 N. E., 303); and such contract could not be set aside by a subsequently elected board, unless it was shown that the teacher was a party to the fraud in an effort to forestall such subsequent board (Sch. T. Milford v. Zeigler (Ind.), 27 N. E., 303; O'Neil v. Battie (Sup.), 15 N. Y. S., 818). Where not waived, a teacher's contract can not be fulfilled by procuring a substitute, however competent (Sch. Dirs. v. Hudson, 88 Ill., 563). In all cases the statutory requirements must be complied with (Cascade v. Lewis, 43 Pa. St., 813). It has been held that where the president of the board is authorized to employ teachers with the consent of the board and he employs one by written contract, who begins to teach with the knowledge of each member, the consent of the other members will be presumed (Hull v. Ind. Dist. (Iowa), 46 N. W., 1053; 48 N. W., 82). However, where the statute fixes a mode and manner in which a teacher is to be selected, a contract otherwise made by individual members of the board will not be binding, and even ratification will not make it valid (Pa. L. Rod Co. v. Cass Bd. Ed., 20 W. Va., 360). If the teacher is unfit or incompetent to teach, the board can not waive this fact; the teacher should be discharged (Sch. Dist v. Maury, 53 Ark., 471). If the resolution is properly passed it is immaterial when the contract is signed (Sch. T. Milford v. Zeigler (Ind.), 27 N. E., 303). However, if the statute required the contract to be in writing, and the teacher performed the services, he would be entitled to compensation (Jones v. Sch. Dist., 8 Kan., 362). A contract reserving the right to discharge the teacher at any time he fails to give satisfaction is valid (Sch. Dist. v. Colvin, 10 Kan., 283). Unless the statute prevents the board from employing a person related to them, the employment of such person would not be necessarily fraudulent (Dolan v. Jt. Sch. Dist. (Wis.), 49 N. W., 960). If the teacher is prevented from discharging his duties by no fault of his, he can recover his wages (Cashen v. Sch. Dist., 50 Vt., 30). See note under 4015-1 (§ 204). If the teacher is allowed to continue after he has been dismissed by consent of the board, it is a waiver of such dismissal, and he could recover (Finch v. Cleveland, 10 Barb. (N. Y.), 290).

ATTACHMENT OR GARNISHMENT OF TEACHER'S SALARY.—As a general rule, it may be stated that in the absence of statutory provision on the ground of public policy, the accrued salary of the public official can not be subjected to the claims of his

creditors by garnishment or attachment. The reasons usually given for this general rule is that it might cripple the public services; that it might drive the official out of office; that it might prevent him from earning a living, and the public interest and public convenience would suffer. If the statute provides that the attachment will lie for money in the hands of any "person, body politic, or corporate," it is held that by reason of such statutory provision the attachment will lie. (*City of Newark v. Funk & Bro.*, 15 O. S., 462.) This case was an attachment of the salary of a city marshal.

While it is generally considered that a school teacher is not what might be properly termed a public officer, yet his employment is of a public character, and some cases treat him as a public official and others do not.

In Michigan, under a statute providing that no person shall be attached and garnished by reason of any money in his hands as a public officer, for which he is accountable merely as such officer to the principal defendant, that the salary due from a school district could not be garnished. (*School Dist. No. 4 v. Gage*, 39 Mich., 484.)

In Kentucky it was held that the compensation of a common school teacher could not be attached principally upon the ground that the commonwealth has undertaken to establish and carry on at public expense a system of common schools and can not permit the wages of teachers of such schools to be intercepted and thereby be deprived of their services and affecting the efficiency of the public school system. (*Allen v. Russel*, 78 Ky., 105.)

In a case in Connecticut, however, it was held that the salary of the school teacher could be attached. (*Seymour v. Over River School District*, 53 Conn., 502.) In this case the court said: "A teacher is not an officer in the ordinary sense of the word; he is not usually elected or appointed, but is employed. He has duties to perform incident to his employment, but they are not official duties, and he is not under oath. We see no good reason why his salary should not be liable for his debts in the same way as the compensation of others employed by the district."

The Supreme Court of Ohio has never passed on this question to my knowledge. In *Swan's Treatise* it is said a claim of defendant on public moneys in the hands of a fiscal officer, such as treasurer of the county, is not, probably, subject to attachment, but this seems to be contrary to the case above cited in 15 O. S., 462.

Judge Bigger, judge of the Court of Common Pleas of Franklin County (39 Bul., 140), held that an attachment would lie, resting his opinion principally upon the decision of our Supreme Court in the 15 O. S. Of course, even conceding that

attachment would lie, it must be first shown that the teacher is not entitled to hold the same exempt from execution, for the claim is for personal earnings, and unless it exceeds \$150 or runs back for more than three months, if the teacher is a married man it can not be attached.

Notwithstanding the opinion of Judge Bigger, whether or not a teacher's salary can be garnished while it is still in the hands of the treasurer is a question of very great doubt in the mind of the author. Under the decision of the Supreme Court above referred to, the statute was so broad that the court could not escape from the conclusion at which it arrived. Since that time the various sections of the Revised Statutes, 5530, referring to cases in the court of common pleas, and 6498, referring to proceedings before the justice of the peace, have been enacted, and these sections both provide that "*if any person, partnership or corporation*" has property of the defendant in his possession, a garnishment may be had. If these statutes stood alone, the court might hold that the word corporation would be broad enough to include a public corporation, but in other sections, to wit, 5534 and 6499, it is provided how such partnership or corporation shall be served, and there is nothing in these sections indicating that a public corporation is included. And in consonance with the general rule that the ordinary statutes relating to garnishment are not to be construed so as to give such right against governmental officers in the absence of express language giving such right, the author is of the opinion, although not free from doubt, that the salary of the teacher in the hands of the treasurer can not be garnished.

SUSPENSION OF DIRECTOR.—The board may, by a two-thirds vote for cause, suspend or remove a director, but he shall not be suspended or removed until charges are preferred in writing and an opportunity is given to be heard, etc. The statute does not define what may be sufficient cause. But any conduct on the part of the director that interferes with the welfare of the school is sufficient. On this matter the board exercises its discretion. All the statute requires is that the director shall be fully apprised of the charges and an opportunity given to defend himself. If the board grossly abused its discretion, the courts might interfere; otherwise, not. Whether the board shall hear oral testimony or not is questionable. From the fact that the testimony is to be made a part of the records it is probably intended that the evidence of witnesses should be made in the form of affidavits. This view is strengthened from the fact that no authority is given to administer oaths to witnesses.

The charge may be in the following form:

Charge for Removal of Director of School District.

To the Board of Education of School District:

The undersigned, a resident of school district, makes the following charge against, director of said district: and asks your honorable board to take such action thereon as to you may seem just and right, as provided by section 4017 of the Revised Statutes of Ohio.

In order that the records may fully disclose that a two-thirds vote was cast in the affirmative, it would be well to call the roll and have an aye and nay vote. If the charges are sustained, it would be well to notify the director of the result. As to the appointment of his successor, see section 36 (§ 3921a).

DIRECTOR OF SCHOOLS IN CITY.—The above section provides for a new officer in school matters. He is the executive officer of the board. His duties are specifically laid out by the statute. He ought to be elected by a roll call and an aye and nay vote.

He has the supervision of all buildings, except those mentioned in the statute. He selects all employes, subject to the approval of the board, and it seems he has sole power of dismissal.

§ 206a. [Unlawful to use influence, etc., or vote for son or daughter or brother or sister for teacher.] (§ 6975a.) It shall be unlawful for any person to offer or give, directly or indirectly, any reward or consideration, or make any present or reduction in price to any person employed in any of the public schools of this state, or to any officer having any authority or control over the same for favoring, recommending or advocating the introduction, adoption or use, in the school in which such person is employed, or over which such officer has any authority or control, of any text-book, map, chart, globe, or other school supplies, or to induce him so to do; and it shall be unlawful for any such employee or officer, to accept or to offer or agree to receive or accept any reward, consideration, present, gift, or reduction in price for so doing; and it shall also be unlawful for any local director or member of a board of education to vote for, or participate in the making of any contract with any person as a teacher or instructor in any of the public schools of this state to whom he is related as father or brother, or to act in any manner in which he is pecuniarily interested, or to receive, or offer to accept or receive any

reward or gain for any official act. Any person violating any of the foregoing provisions shall, upon conviction, be fined not less than twenty-five dollars, and not more than five hundred dollars, or be imprisoned not more than six months, or both. (86 v. 207.)

A member of a board of education or of a board of sub-directors can not legally vote for any person related, either by blood or marriage, in the degrees mentioned in section 6975a.

Boards of education are given power to appoint teachers, and in the absence of gross abuse of discretion in the exercise of this power an injunction will not lie. (13 C. C., 207.)

This section, as enacted March 31, 1892, repealed by implication the same section as enacted March 15, 1892. (1 N. P., 286.) (Pierce v. Bd. of Education of School District No. 14.)

The restriction that no contract is valid unless money is in treasury and set apart, does not apply to contracts authorized by the provisions of law to be made for employing teachers and other school employes; see section 2834b, under 3971 (§ 82).

§ 206b. [**Minimum salary to teacher; state aid to weak districts.**] Sec. 1. That no person shall be employed to teach in any public school in Ohio for less than forty dollars a month; and that, when any school district in Ohio has not sufficient money to pay its teachers forty dollars per month for eight months of the year, after the board of education of said district has made the maximum school levy authorized by law, three-fourths of which shall be for the tuition fund, then said school district is hereby authorized to receive from the state treasury sufficient money to make up this deficiency. Any board of education having such a deficit shall make affidavits to the county auditor, who shall send a certified statement of the facts to the state auditor. The state auditor shall issue a voucher on the state treasurer in favor of the treasurer of said school district for the full amount of the deficit in the tuition fund.

Sec. 2. No district shall be entitled to state aid as provided in section 1 of this act, unless the number of persons of school age in said district shall be at least twenty times the number of teachers employed in said district. (98 v. 200.)

While no appropriation was made for state assistance, the remaining features of the law are in force just the same and

boards of education are required to pay the minimum salary of forty dollars a month for eight months, provided the levy of twelve mills, three-fourths of which shall be placed in the tuition fund, will be sufficient for this purpose. Where the levy is not sufficient for this purpose, the schools should be continued for eight months at the highest salary the amount received from the levy will permit.

§ 207. [Superintendents and teachers in city districts; appointment and term of office; duties.] (§ 4017a.) The board of education in each city school district shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, the term to begin within four months of such appointment. Provided, that the present board of education shall not employ a superintendent for a term to exceed [extend] beyond the school year ending August 31, 1905. Said superintendent shall, upon his acceptance of the appointment, become thereby empowered to appoint, subject to the approval and confirmation of the board, all the teachers, and he may for cause suspend any person thus appointed until the board or a committee of the board may consider such suspension, but no one shall be dismissed by the board except as provided in section 4017 (§ 206), of the Revised Statutes of Ohio; provided that any city board of education may, upon a three-fourths' vote of its full membership, re-employ any teacher whom the superintendent refuses to appoint. Said superintendent shall visit the schools under his charge, direct and assist teachers in the performance of their duties, classify and control the promotion of pupils, and perform such other duties as the board may determine. He shall report to the board of education annually, and oftener if required, as to all matters under his supervision, and may be required by the board to attend any and all of its meetings and may take part in its deliberations, but shall not vote.

[Superintendent and teachers in other districts; appointment and term of office; duties.] The board of education of each village, township and special school district may appoint a suitable person to act as superintendent, and to employ the teachers of the public schools of the district, for a term not longer than three school years, the term to begin within four

months of the date of the appointment; but nothing herein shall be construed as preventing two or more districts uniting and appointing the same person as superintendent. Provided, that the present board of education shall not employ a superintendent or teacher for a term to extend beyond the school year ending August 31, 1905. The superintendent shall, upon his acceptance of the appointment, become thereby empowered to visit the schools under his charge, direct and assist teachers in the performance of their duties, classify and control the promotion of pupils, and perform such other duties as the board may determine. He shall report to the board of education annually, and oftener if required, as to all matters under his supervision, and may be required by the board to attend any and all of its meetings, and may take part in its deliberations, but shall not vote; provided, however, that any board may permit or require the superintendent to devote a portion of his time to teaching, subject to the rules and regulations of said board. (97 v. 362.)

§ 208. [Teachers, duties of; janitor work not required.] (§ 4018.) All teachers shall exercise reasonable care in regard to all school property, apparatus, and supplies intrusted to their keeping. They shall strive to guard the health and physical welfare of the pupils in their schools, give efficient instruction in the studies pursued, and endeavor to maintain and preserve good discipline over all the pupils under their charge. Provided, however, that no teacher shall be required by any board to do the janitor work of any school room or building, except as mutually agreed by special contract, and for compensation in addition to that received by him for his services as teacher. (97 v. 363.)

If there is no special contract to do janitor work, and the teacher is required to perform the same in properly teaching school he can recover the value of the same from the Board of Education. Reid v. Board of Ed., 16 Dec. 414 ().

School teacher—rights and liabilities in relation to pupil.

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| 1. Relation of Teacher and Pupil. | (c) When Being Illegal as Being Excessive. |
| 2. Power to inflict corporal Punishment. | (d) What will Constitute Excessive Punishment. |
| (a) How Exercised. | (e) Not Affected Because the Pupil is of Age. |
| (b) What Teacher Should Take Into Consideration. | (f) Can Punish Even if Forbidden by the Parent. |

3. Jurisdiction.

(a) Extent of as to Time and place.

(b) Teacher Can Not Punish Child for Refusing to Study, When

Excused by the Parent.

4. Power of Expulsion.

5. Liability for Failure to Instruct.

6. What are Reasonable Rules.

The number of decisions upon the rights and liabilities of a teacher in relation to his pupil are not as numerous as the great number of persons interested and affected would warrant one in believing.

For almost every one in the civilized world has at one time in his life been either a teacher or a pupil.

These controversies, relating as they do to the control, management and correction of pupils are apt to have their origin in wounded parental feeling and are frequently prosecuted with much bitterness. "It is a cause of congratulation," says Judge Lyon, "that so few of these controversies appear in the courts." (*State v. Burton*, S. C. Wis., 1879.)

1. RELATION OF TEACHER AND PUPIL.—The earlier authorities, as well as some of the modern ones, seem to place the authority of the teacher over the pupil while exists upon the same footing as that of a parent over his child. (*Brac. Abtr.*, tit. Assault and Battery, c; 1 *Bish. Crim. Law*, § 771.) But this seems to be too broad, and even as far back as Blackstone we are taught "that the teacher has such portion of the power of the parent committed to his charge, viz.: that of restraint and correction, as may be necessary to answer the purposes for which he was employed." (1 *Black. Com.*, 453.)

Chitty adds in a note, "This power must be temperately exercised, and no schoolmaster should feel himself at liberty to administer chastisement co-extensively with a parent, however the infant might have appeared to have deserved it."

In *Lander v. Seaver* (32 *Vt.*, 114), the court says: "The parent, unquestionably, is answerable only for malice or wicked motives, or an evil heart in punishing his child. This great and, to some extent, irresponsible power of control and correction is invested in the parent by nature and necessity. It springs from the relation of parent and child. It is felt rather as a duty than as a power. This parental power is little liable to be abused, for it is continually restrained by natural affection, the tenderness which the parent feels for his offspring, an affection ever on the alert, and acting rather by instinct than by reasoning. The schoolmaster has no such natural restraint. Hence he may not be trusted with all the parent's authority, for he does not act from the instinct of parental affection. He should be guided and restrained by

judgment and wise discretion, and hence is responsible for their reasonable exercise."

In *Morrow v. Wood* (S. C. Iowa, 1874; 13 Am. L. Reg., 692) it was claimed that the teacher had the right to prescribe the studies which the child should pursue, even as against the express directions of the parent. This was, however, denied by the court in the following language: "We do not think she had such right or authority, and we can see no necessity for clothing the teacher with such rights and arbitrary power. We do not really understand that there is any recognized principle of law, nor do we think there is any rule or morals or social usage which gives to the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of law of the land? Ordinarily, it will be conceded the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And, furthermore, it is one of the earliest and most sacred duties taught a child to honor and obey its parents. . . . Now, we can see no reason whatever for denying to the father the right to direct what studies included in the prescribed course his child shall take."

If a parent acts in good faith, prompted by pure parental love, without passion, inflicts no permanent injury in the child, he should not be punished merely because a jury, reviewing the case, deem it unwise to proceed so far (1 Bish. Cr. Law (7th ed.), § 882; Schouler's Dom. Rel. (4th ed.), § 244 I Black. Com., 556; 1 Greenl. Ev., § 97; 2 Addison on Torts (Wood's ed.), § 840; *Danenhoffer v. State*, 69 Ind., 295; *Com. v. Randall*, 4 Gray (Mass.), 36; *State v. Burton*, 46 Wis., 150; and the right of the parent may be delegated to the teacher (2 Kent. Com., § 203.)

A schoolmaster is regarded as standing in place of the parent, and may administer, in case of misconduct, reasonable and proper punishment to a pupil, having regard to the character of the offense, the sex, age, size and physical strength of the offender; and he is liable criminally for any abuse of his authority, if prompted by malice or other proper motive, if unreasonably severe, if inflicted with an improper instrument, or if resulting in permanent injury to the pupil (*Boyd v. State*, 88 Ala., 169).

2. POWER TO INFLICT CORPORAL PUNISHMENT.—The authorities all concede the power of the teacher, under proper circumstances, to inflict a corporal punishment.

(a) In the case of *Quinn v. Nolan* (4 Cin. L. Bull., 81), Judge Harmon, in his charge to the jury, makes use of the following language: "From the time of Solomon to the present, parents have had the right, in a proper manner and to a proper degree, of inflicting corporal punishment on their children, and when a parent sends the child to a public school, the teacher has the same right while the child is under his or her charge.

"It is not disputed that by the express rules of the school in question, to which rules the father assented when he sent his child there, corporal punishment was permitted in proper cases and in a proper manner. The question, therefore, in this case is, not whether the defendant inflicted corporal punishment on the child, for that is admitted, but whether, considering the offense of the child, if any, his age, condition and all the circumstances, the defendant inflicted extreme and unnecessary punishment; because, while the teacher has a right to punish, it is the right to punish only in a proper manner and to a proper degree. If the teacher goes beyond that, the act becomes unlawful and she is responsible for the consequences.

"In determining this question, the jury should consider the offense, the size and apparent condition of the child, the character of the instrument of punishment used, and the testimony as to the manner in which, and the extent to which, the punishment was inflicted."

The *State v. Pendergrass* (2 Dev. & Bat., 365) is an early and leading case upon this subject, and is very plain and full as to the extent of this power. Here it is said: "The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs or health, or shall disfigure the child, or cause any permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which it is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, can not be so pronounced, since it may have been necessary for the reformation of the child and does not injuriously affect his future welfare. . . . When the correction administered is not in itself immoderate, and not therefore beyond the authority of the teacher, its legality or illegality must depend entirely on the *quo animo* with which it was administered. Within the sphere of his authority the master is the judge when correction is required, and of the degree of correction necessary; and like all others imparted with a discretion, he can not be made penally responsible for error of judgment, but only for wickedness of purpose."

In inflicting such punishment the teacher must exercise sound discretion and judgment, and must adapt it not only to the offense, but the offender. Horace Mann, a high authority in

the matter of schools, says of corporal punishment: "It should be reserved for the baser faults. It is a coarse remedy, and should be employed upon the coarse sins of our animal nature, and when employed at all it should be administered in strong doses." Of course, the teacher in inflicting such must not exceed the bounds of limitation. No precise rule can be laid down as to what shall be considered excessive or unreasonable punishment. Each case must depend upon its own circumstances. (Reeves on Dom. Rel., 288, 534.)

The teacher must exercise reasonable judgment and discretion and be governed as to the mode and severity of the punishment by the nature of the offense, and the age, size and apparent powers of endurance of the pupil. (Com. v. Randall, 4 Gray, 436.)

(b) And he should also take into consideration the mental and moral qualities of the pupil, and, as indicative of these, his general behavior in school and his attitude toward his teacher, become proper subjects of consideration. And in making the chastisement the teacher may take into consideration, not merely the immediate offense which had called for the punishment, but the past offenses that aggravated the present one and showed the pupil to have been habitually refractory and disobedient. Nor is it necessary that the teacher should, at the time of inflicting the punishment, remind the pupil of his past and accumulating offenses. The pupil knew them well enough, without having them brought freshly to his notice. (Sheehan v. Sturges, 22 Rep., 455; s. c., 16 Cin. L. Bull., 33; S. C. Conn., 1886.)

(c) The chastisement must not exceed the limits of moderate correction, and though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with reasonable indulgence upon the exercise of this right, yet, whenever the correction shall appear to have been clearly excessive and cruel, it must be adjudged illegal. (Hathnot claim the privilege and receive it, and at the same time away v. Rice, 19 Vt., 102.) And the master is not relieved from liability in criminal cases for the punishment of a scholar which is clearly excessive and unnecessary by the fact that he acted in good faith and without malice, honestly thinking that the punishment was necessary, both for the discipline of the school and the welfare of the scholar. (Lander v. Seaver, 32 Vt., 114.)

(d) And whether under the facts the punishment was excessive must be left to the jury to decide. (Com. v. Randall, 4 Gray, 36.) But in the State v. Mizner, it was said, that "any punishment with a rod which leaves marks or welts on the person of the pupil for two months afterwards, or much less time, is immoderate and excessive, and the court would

have been justified in so instructing the jury." (50 Iowa, 145.) The pupil must also understand and know, or have the means of knowing, for what offense he is being punished. (*Id.*)

In criminal actions, if there is a reasonable doubt whether the punishment was excessive, the teacher should have the benefit of the doubt. (*Lander v. Seaver*, 32 Vt., 114; *Whar. Crim. Law*, 1259.)

In an English case, where, on the boy's return to school, his master wrote to the boy's parent, proposing to beat him severely, in order to subdue his alleged obstinacy, and on receiving the father's permission, beat the boy for two hours and a half, secretly in the night and with a thick stick until he died it was held that he was guilty of manslaughter, and not murder, no malice being proven. (*R. v. Hopley*, 2 F. & F., 202.)

And in the absence of all proof the law presumes that the teacher punishes his pupil for a reasonable cause and in a reasonable manner.

But this presumption, like other legal presumptions, may be rebutted by proof. (*State v. Mizner*, 50 Iowa, 145; s. c., 32 Am. Rep., 128; *Hathaway v. Rice*, 19 Vt., 102.) And the teacher has the right to show that the chastisement was reasonable and for misconduct in school. (*State v. Mizner*, 45 Iowa, 248; s. c., 24 Am. Rep., 769.)

(*e*) And the teacher's right to chastise his pupils is not affected by the fact that the pupil, voluntarily in the school, is of lawful age and therefore not entitled to attend school. (*Id.*)

Upon this question the Supreme Court of Maine makes use of the following language (*Stewart v. Fassett*, 27 Me., 266, 287): "But it is insisted that if such is the authority over one who is in the legal contemplation a scholar, the same can not apply to the case of one who has no right to attend the school as a pupil. It is not necessary to settle the question whether one living in the district and not being between the age of four and twenty-one years can, with propriety, require the instruction of town schools. If such does present himself as a pupil, is received and instructed by the master, he can not claim the privilege and receive it, and at the same time be subject to none of the duties incident to a scholar. If disobedient, he is not exempt from liability to punishment, so long as he is treated as having the character which he assumes. He can not plead his own voluntary act, and insist that it is illegal, as an excuse for creating disturbances, and interrupting the ordinary business of the school."

escape consequences which would attach to him either as a refractory, incorrigible scholar, or as one who persists in in-

(*f*) And the teacher has the right to punish the pupil within

the bound of law, even though he has instruction from the father that the child must not be whipped. (*State v. Manx, Straus*, 3 Tenn. Law Rep., 19.) He is the absolute judge of the kind of punishment to be inflicted, with the limitation that it shall be reasonable and usual, and not destructive of the relation, or subversive of the contract under which the relation exists. (*Stare v. Litchfield*, 40 Barb., 511.) It may be by whipping, or he may impose any reasonable restraint upon the person of the pupil which will prevent disorder in his school. (*Fitzgerald v. Northcote*, 4 F. & F., 656; *Cooley on Torts*, 171.)

But it was held that where a person took a pupil into his house, agreeing to instruct and protect him and provide for his physical wants, he was not entitled to turn him out into the street, withdraw his care, and deny him shelter and the comfort of his home, under the name and form of punishment. Such mode of punishment is neither reasonable nor usual. (*Stare v. Litchfield*, 40 Barb., 541.)

Where teacher, after chastising pupil severely in school-room, followed him into the yard, struck him with a stick, put his hands in his pocket as if to draw a knife, when the pupil only protested, and after apologizing for language imputed, asked to withdraw, and the teacher hit him in the face three times with his fist, and then hit him over the head with the butt end of a switch, from which the eye was closed for several days, and the teacher remarked in the presence of the school that he could whip any man in China Grove beat, he was convicted and fined. (*Boyd v. State*, 88 Ala., 169.)

3. JURISDICTION.—It is conceded that the right to punish extends to school hours, and that there seems to be no reasonable doubt that the supervision and control of the master over the pupil extends from the time he leaves home to attend school till he returns home from school.

In the recent case of *Balding v. State* (24 Reporter, 314; 8 Cin. Law Bull., 217), the court of appeals in Texas held that a public school teacher may require the preparation of lessons at the home by the scholar: "Teachers have the same right, the same as parents, to prescribe reasonable rules for the government of children under their charge, and to enforce by moderate restraint and correction obedience to such rules. This authority of a teacher over his pupil is not, in our opinion, necessarily limited to the time when the pupils are at the school-room, or under the actual control of the teacher. Such authority extends, we think, to the prescribing and enforcement of reasonable rules and requirements, even while the pupils are at their homes."

(a) In the case of *Lander v. Seaver* (32 Vt., 114), it was held that, although a schoolmaster has in general no right to

punish a pupil for misconduct committed after the dismissal of the school for the day and the return of the pupil to his home, yet he may, on the return of the pupil to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school or subvert the master's authority.

In the recent case of *Derkins v. Goss* (20 Cent. L. J., 418; S. C. Mo., 1885), decided that the teacher has the right to make a rule, and to enforce it by whipping, prohibiting the boys from swearing, quarreling or fighting on their way home from school and before the parental authority over them has been resumed.

(b) But it has been held that the teacher had no right to compel the pupil to study certain branches when the pupil was excused therefrom by his parent, and if the teacher attempted to force the pupil so to do and the pupil refused and the teacher inflicted corporal punishment upon such pupil for such refusal, that the teacher would be guilty of assault and battery. (*Morrow v. Wood*, 13 Am. Law Reg., N. S. 693.)

And it was said that until compulsory education was established that the court was unwilling to establish the rule that a teacher may punish a pupil for not doing something the parent has requested the pupil to be excused from doing. (*State v. Mizner*, 50 Iowa, 145; 32 Am. Rep. 128.)

The fact that the school was a public one, in which the studies were prescribed by statute, did not vary the general rule as to the right of the parent to direct the omission of a part of the prescribed studies. (*Id.*)

4. POWER OF EXPULSION.—The teacher has not, it seems, a discretionary power of expulsion, but only for reasonable cause. (*Fitzgerald v. Northcote*, 4 F. & F., 685.) The power of expulsion is usually placed in the hands of the school directors or other committee in charge of the school. And the teacher generally has power only to suspend the pupil until the matter can be brought to the attention of such superior body. This is regulated by statute in some of the states. (Rev. Stat. Ohio, 4014 [§ 202].) For a wrongful expulsion the teacher would be liable in damages, not only to the child, but in *Roe v. Deming*, it was held that the father of a child, entitled to the benefits of the public school of the sub-district of his residence, may maintain an action against the teacher of the school and the local directors of the sub-district for damages for wrongfully expelling the child from school. (Ohio St., 666.)

This question was very thoroughly discussed in *State v. Burton* (18 Am. Law Reg., 233; S. C. Wis., 1879), in which it was said that "the teacher is responsible for the discipline of his school, and for the progress, conduct and deportment of his

pupils. It is his imperative duty to maintain good order and require of his pupils a faithful performance of their duties. If he fails to do so, he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his commands. For this reason the law gives him the power, in proper cases, to inflict corporal punishment upon refractory pupils. But there are cases of misconduct for which such punishment is an inadequate remedy. If the offender is incorrigible, suspension or expulsion is the only adequate remedy. In general, no doubt, the teacher should report a case of that kind to the proper board for its action in the first instance, if no delay will necessarily result from that course prejudicial to the best interests of the school. But the conduct of a recusant pupil may be such that his presence for a day or an hour may be disastrous to the discipline of the school and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privilege of the school; and he must necessarily decide for himself whether the case requires that remedy. If he suspend the pupil, he should promptly report his action to the board. It will be seldom that the teacher in charge of the school will be compelled to exercise this power, because usually he can readily communicate with the district board and obtain the direction and order of the board in the matter. But where the government of a public school is vested in a board of education, with a more numerous membership than district boards, and which hold stated meetings for the transaction of business, the facilities for speedy communication with the board may be greatly decreased, and more time must usually elapse before the board can act upon a complaint of the teacher. In those schools the occasion which requires the action of the teacher in the first instance will occur more frequently than in the district schools. We conclude, therefore, that the teacher has, in a proper case, the inherent power to suspend a pupil from the privileges of the school, unless he has been deprived of the power by the affirmative action of the board."

See suspension of pupil, § 4014 (§ 202).

5. LIABILITY FOR FAILURE TO PROVIDE.—Whether an action will lie against a teacher for a failure to instruct a pupil that lawfully comes to him for instruction, or whether the remedy is confined to an appeal to the governing board, Judge Cooley says (page 288), in his work on Torts, is left in doubt by the authorities, though he expresses the opinion that such refusal is actionable. And in *Spear v. Cummings*, 23 Pick., 224, it was held that the teacher of a town school was not liable to an

action by the parent for refusing to instruct his children. If an action can be maintained in such case, it should be in the name of the child and for his benefit. (*Stephenson v. Hall*, 14 Barb., 222.)

There is no implied contract between a teacher and a pupil in the public schools that the former shall teach the latter; so held, where a teacher refused to hear the pupil recite any lesson in any study unless he would procure a copy book and take lessons in a certain system of penmanship. (*Bd. Ed. v. Common Council District (Mich.)*, 45 N. W., 5851.)

6. WHAT ARE REASONABLE RULES.—A rule providing that pupils may be suspended from school in case they shall be absent or tardy, except for sickness or other unavoidable cause, a certain number of times, is a reasonable and proper rule for the government of the school. (*Burdick v. Babcock*, 31 Iowa, 562.) Also to exclude a child whom it is deemed is of a licentious character and immoral, although such character is not manifested by any acts of licentiousness or immorality within the school. (*Sherman v. The Inhabitants of Charleston*, 8 Cush., 160.) Likewise, for acts of neglect, carelessness of posture in his seat and recitation, tricks of playfulness and inattention to study, and the regulations of the school in minor matters. (*Hodgkin v. Rockport*, 105 Mass., 475.)

A requirement by a teacher of a district that the pupils in grammar schools shall write English compositions is a reasonable one, and if such pupil, in the absence of a request from his parent, refuse to comply with such rule, he may be expelled from the school on that account. (*Guernsey v. Pitkin*, 32 Vt., 224.)

But a rule that required that no pupil should attend a social party is not reasonable, and an expulsion for such violation of such a rule would be illegal. (*Dritt v. Snodgrass*, 66 Mo., 286.)

A regulation that each scholar, when returning to school after recess, shall bring into the school room a stick of wood for the fire is not needful for the government of the school, and a scholar can not be suspended for a refusal to comply with such rule. (*State v. Board of Education*, 24 Am. Law Reg., 601; *S. C. Wis.*, 1885.)

A rule requiring pay for school property wantonly or carelessly destroyed should not be enforced by corporal punishment. (*State v. Vanderbilt (Ind.)*, 18 N. E., 266.)

See § 92 as to reasonable rules.

The policy of the law seems to be, as it should be, that the teacher is to be as little hampered in his school management as possible by outside persons. And it has always occurred to us that, unless there has been a flagrant violation of law and a

mean, malicious spirit manifested by the teacher, parents and others ought not to interfere.

§ 209. [Teachers dismissed for insufficient cause may institute suit.] (§ 4019.) If the board of education of any district dismiss any teacher for any frivolous or insufficient reason, such teacher may bring suit against such district, and if, on the trial of the cause, a judgment be obtained against the district, the board thereof shall direct the clerk to issue an order upon the treasurer for the sum so found due to the person entitled thereto, to pay the same out of any money in his hands belonging to such district, and applicable to the payment of teachers; and in such suits process may be served on the clerk of the district, and service upon his [him] shall be sufficient. (97 v. 363.)

Sec. 4020. Repealed, 88 v. 568, § 10.

4020-1) Sec. 1. (Superseded by §§ 4020-10—4020-14, but not repealed. Enacted, 88 v. 568.)

Dismissal of Teacher.
Improper Conduct.
Written Charge.
Trial.

Order of Dismissal.
Form of Order.
Miscellaneous Matters Relating to Dismissal.

DISMISSAL OF TEACHER.—Each board of education may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality or improper conduct; but no teacher shall be dismissed by any board unless the charges are first reduced to writing, and an opportunity be given for defense before the board or committee thereof, and a majority of the full membership of the board upon roll call vote in favor of such dismissal, section 4017 (§ 206). The first clause above gives the causes; the second, the method of procedure.

If the board acts strictly as directed by statute, they will not be liable in a suit for damages; if they do not, they may be. The four causes for which they may be dismissed are (1) inefficiency; (2) neglect of duty; (3) immorality, and (4) improper conduct.

INEFFICIENT.

(1) To be inefficient is to be not efficient, and to be efficient is to be able to produce, or cause to exist. As used here it means that the person must have the faculty and possess the ability to produce that which he is employed to do; *i. e.*, the

education of the children sent to his school; if for any reason he is unable to do this in a reasonable degree, he is inefficient. The teacher might be inefficient for the want of a proper education, although having a certificate, the presumption would be that he is not inefficient from this cause; then he might be inefficient by reason of his health, or because of his want of executive ability or power to properly conduct his school and control his scholars; then he might be possessed of such a temper as to retard or destroy his ability to accomplish anything, or possibly there might be such antipathy between him and his scholars as would make him inefficient; or he might be thrown into such circumstances that his usefulness as a teacher is destroyed. The state is interested in the education of her children. She makes ample provision to that end. She employs teachers for that purpose, and to accomplish that end pays the teacher; and if the teacher can not or does not accomplish that purpose, then he not only does not earn his salary, but he is causing an injury to the public, and should be dismissed. The school board is not an eleemosynary institution.

NEGLECT OF DUTY.

(2) Neglect of duty, no doubt, will cause a teacher to be inefficient, and still not be guilty of neglect of duty as here used. The neglect to perform the conditions of his contract would be a neglect of duty for which he might be discharged, so would a refusal to abide by the rules of the board of education in reference to the conduct of the school, or to teach the required branches, or to keep school open the proper hours, or to keep himself in a cleanly condition.

(3) *Immorality.*—In no avocation of life, the ministry of the gospel not excepted, should there be a higher standard of morality than in that of the school teacher. He is, and should be, an example for his pupils. His language at all times should be chaste and pure and his conduct everywhere above criticism. Specifically stated, he should not swear or use lewd language; he should not consort with women of questionable character; he should not frequent saloons or gambling houses; he should not drink intoxicants to excess; better not drink them at all; he should not use tobacco in the school room, cigarettes anywhere; he should not associate with criminals or evil-disposed persons; he should not violate the laws of his country; he should not be untruthful or take advantage of his fellowmen by dishonest and designing practices.

In another state it was held that a man who habitually violated his duty of profanity and Sabbath breaking was of bad moral character and not a proper person to teach school. (*Wieman v. Mabee*, 45 Mich., 2184.)

The fact that the teacher has been licensed by the county examiners, and the latter have failed to make the certificate, is not conclusive on the board as to the morality of the teacher. (Sch. Dist. v. Maury, 53 Ark. St., 471.) Neither will the fact that the board has tolerated the teacher's misconduct and efficiency for a time operate as a waiver of its right to discharge him. (Sch. Dist. v. Maury, 53 Ark., 471.)

IMPROPER CONDUCT.—Just what is meant by improper conduct, outside of what might be included in one or all of the other grounds of dismissal, is not easily discernible. It probably means any conduct on the part of the teacher that will destroy or interfere with the general welfare of the school. Thus, if the teacher refused to receive back a pupil whom he suspended, when his action was overruled by the board (Parker v. School Dist., 5 Lea (Tenn.)), his conduct would be improper. It is said that under the common law a teacher is subject to discharge if he fails to perform his duty in any material point. (Tripp v. Sch. Dist., 50 Wis., 657.) If the teacher is unable and incompetent to teach the branches he is employed to teach, he may be dismissed. (Crawfordsville v. Hayes, 42 Ind., 200.)

WRITTEN CHARGE.—The charge upon which the teacher is to be dismissed must be in writing, and it should set out specifically the grounds of the same. It should not merely allege that the teacher is guilty of inefficiency, etc., but it should state how he is inefficient, or in what manner he neglects his duty, or what he has done that makes him immoral, or how he has been guilty of improper conduct, etc. The form may be similar to that to remove a director (§ 206) and the trial may be much in the same manner.

TRIAL.—It has been said "that the delicate nature of the duty devolved upon trustees to see that unfit or incompetent persons are not put or kept in charge of the children who attend the common schools forbids the idea of a trial with the formality and strictness that belongs to courts." (People v. Bd. of Ed., (N. Y.), 181.)

The only thing that the law requires is that the teacher be given a fair opportunity to be heard, and produce whatever defense he may have. There is no power to subpoena witnesses or swear them, neither must it be a matter of record like in the dismissal of a director. It would be well to have the matter submitted upon oral testimony where the same could be done, but if this could not be done, then upon affidavits.

ORDER OF DISMISSAL.—Where all the testimony is in, then if the matter has been heard by a committee, the committee makes a report, and the entire board takes a vote, and if two-thirds

of the full membership of the board votes in favor of a dismissal, or sustaining of the charge, the teacher is dismissed. There must be a roll call and an aye and nay vote upon this proposition. He should be formally notified of this action of the board. All these matters should be spread upon the minutes.

Form of Order.

To

Sir:—You are hereby notified that at a regular (or special) meeting of the board of education, of district, the charges against you of were sustained by a two-thirds vote of the full membership of said board, and you were ordered dismissed as a teacher of school. You will please take due notice thereof, and act accordingly. Your services will end on, the day of, 190...

(Date.)

.....
Clerk of Board of Education of School District.

MISCELLANEOUS MATTERS RELATING TO DISMISSAL.—If the board act in good faith in their actions in dismissing a teacher, they will not be personally liable for damages. (Gregory v. Small, 39 Ohio St., 346.) They should proceed as directed by law. (Townsend v. Sch. Trs., 41 N. J. L., 312.) The fact that the teacher has a certificate of good moral character is not conclusive, and the board may dismiss him if they find him to be immoral. (Sch. Dist. v. Manury, 55 Ark., 47; McCutchen v. Windsor, 55 Mo., 149.) In one case it is said: "The delicate nature of the duty devolved upon the board to see that unfit or incompetent persons are not put or kept in charge of the children who attend the common schools forbids the idea of the trial with the formality and strictness that belongs to courts." (The People v. Bd. of Ed., 3 Hun (N. Y.), 181.) If the teacher is incompetent or unable to teach the branches of instruction he has been employed to teach, he may be dismissed. (Crawfordsville v. Hays, 42 Ind., 200.) So if he is charged with outrageous crimes. (Tingley v. Vaughn, 17 Ill. App., 347.) If a teacher refused to take back a pupil whom he had suspended, when so directed by the board, he might be dismissed. (Parker v. Sch. Dist., 5 Lea (Tenn.), 525.) The mere fact that the board tolerates a teacher's misconduct and inefficiency for a time does not operate as a waiver of right to discharge him therefor. (Sch. Dist. Ft. Smith v. Maury, 53 Ark., 471.) If the teacher is discharged without cause, he may recover the amount of his wages according to the contract. (Bd. Regents v. Mudge, 21 Kans., 223; Ewing v. Sch. Dirs., 2 Ill. App., 458.) Unless, as one court has held, he could have procured similar employment, the burden of proving which is on the board. (Sch. Dist. v. Stilley, 36 Ill. App., 133.)

- 4020-2) Sec. 2. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-3) Sec. 3. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-4) Sec. 4. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-5) Sec. 5. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-6) Sec. 6. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-7) Sec. 7. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-8) Sec. 8. (Superseded by §§ 4020-10—4020-14, but not repealed.)
(4020-9) Sec. 9. (Superseded by §§ 4020-10—4020-14, but not repealed. Enacted, 88 v. 568.)

TEXT-BOOK LAW.

§ 210. [Filing and preservation of copies and prices of school books.] (§ 4020-10). Sec. 1. Any publisher or publishers of school books in the United States desiring to offer school books for use by pupils in the common schools of Ohio as hereinafter provided, shall, before such books may be lawfully adopted and purchased by any school board in this state, file in the office of the state commissioner of common schools a copy of each book proposed to be so offered, together with the published list wholesale price thereof, and no revised edition of any such book shall be used in the common schools until a copy of such revised edition shall have been filed in the office of the said commissioner, together with the published list wholesale price thereof. The said commissioner shall carefully preserve in his office all such copies of books and the prices thereof so filed. (92 v. 282.)

ADOPTION OF SERIES OF SCHOOL BOOKS, ETC.—It is within the province of the legislature to pass an act prescribing a certain series of books to be used in the schools, and such an act would not conflict with a constitutional provision providing that it should be the duty of the legislative assembly to establish and maintain a general, uniform and thorough system of public, free common schools. (*Campana v. Calderhead*, 17 Mont., 548.) Such an act does not impune the right of local self-government. (*State v. Haworth*, 182 Ind., 462); and if the legislature does not exercise this power itself, it is properly conferred upon the school trustees (*State v. Dixon County School Dist. No.—*, 31 Neb., 552; *The State v. Bronson*, 115 Neb., 271); and it has often been held that the legislature might give to one person an exclusive privilege for a definite

length of time of furnishing books and compelling the school officers to procure them from him as well as its patrons (*State v. Haworth*, 122 Ind., 462); and the pupil may be suspended for refusal to procure a prescribed book (*State v. Weber*, 108 Ind., 31); and the parent can not insist that his child shall be allowed to use a text-book different from that adopted by the proper authorities (*Lakeview School v. People*, 87 Ill., 303); and where the legislature confers the authority upon the school board to adopt a series of text-books, such action of the board of education is a discretionary one and can not be reviewed by a court. (*People v. Oakland*, 54 Calif., 375.)

However, a board of education must follow as the statute provides in adopting a certain series of books, and if they attempt to annul their action previous to the time allowed by statute, the court will compel them to allow the continued use of the books adopted until the end of the time for which they had been adopted (*People v. Frost*, 32 Ill. App., 242); and this authority may be invoked by the parent of the child attending the school. (*State v. Columbus*, 35 Ohio St., 368.)

The courts are powerless to prevent the legislature from prescribing what kind of text-books shall be used in schools and in directing how and upon what terms they shall be procured, and in giving to one person for a definite period of time an exclusive contract for purchasing the same. (*Currier v. Merrill*, 25 Minn., 1.)

§ 211. [Maximum price; notification of publisher.] (§4020-11.)

Sec. 2. Whenever and so often as any book and the price thereof shall be so filed in the commissioner's office as provided in section 1, a commission consisting of the governor, the secretary of state and the state commissioner of common schools shall immediately fix the maximum price at which such books may be sold to or purchased by boards of education as hereinafter provided, which maximum price so fixed on any book shall not exceed seventy-five per cent. of the published list wholesale price thereof, and the state commissioner of common schools shall immediately notify the publisher of such books so filed, of the maximum price so fixed. If the publisher so notified shall notify the commissioner in writing that he accepts the price so fixed, and shall agree in writing to furnish such book during a period of five years at the price so fixed, such written acceptance and agreement shall entitle said publisher to offer said book so filed for sale to said board of education for use by the pupil under the terms of this act. (92 v. 282.)

§ 212. [**Notices to boards; legality dependent on compliance.**] (§ 4020-12.) Sec. 3. The said commissioner shall during the first half of the month of June, 1896, and during the first half of the month of June in each year thereafter, furnish to each board of education the names and addresses of all publishers who shall have during the year ending on the first day of said month of June in each year, agreed in writing to furnish their publications upon the terms provided in this act. And it shall not be lawful for any board of education to adopt or cause to be used in the common schools any book whose publisher shall not have complied, as to said book, with the provisions of this act. (92 v. 282.)

§ 213. [**Procedure upon violation of agreement by publisher.**] (§ 4020-13.) Sec. 4. If any publisher who shall have agreed in writing to furnish books as provided in this act, shall fail or refuse to furnish such books adopted as herein provided to any board of education or its authorized agent upon the terms as herein provided, it shall be the duty of said board at once to notify the said commission of such failure or refusal, and the commission shall at once cause an investigation of such charge to be made, and if the same is found to be true, the commission shall at once notify said publisher and each board of education in the state that said book shall not hereafter be adopted and purchased by boards of education; and said publisher shall forfeit and pay to the state of Ohio five hundred dollars for each failure, to be recovered in the name of the state, in an action to be brought by the attorney-general, in the court of common pleas of Franklin county, or in any other proper court or in any other place where services can be made, and the amount, when collected, shall be paid into the state treasury to the credit of the common school fund of the state. (92 v. 282.)

§ 214. [**When contract made; shipment of books, etc.; sale to pupils; purchase from pupils; free books.**] (§ 4020-14.) Sec. 5. Each board of education, on receiving the statements above mentioned, from said commissioner, shall, on the third Monday in August thereafter meet, and at such meeting, or at an adjourned meeting within two weeks after said Monday, determine by a majority vote of all members elected the studies

to be pursued and which if said text-books so filed shall be used in the schools under its control, but no text-books so adopted shall be changed, nor any part thereof altered or revised, nor shall any other text-book be substituted therefor for five years after the date of the selection and adoption thereof without the consent of three-fourths of all the members elected, given at a regular meeting; and each board of education shall cause it to be ascertained, and at regular meetings in April and August shall determine which, and the number of each of said books the schools under its charge shall require, until the next regular meetings in April and August, and shall cause an order to be drawn for the amount in favor of the clerk of the board of education, payable out of the contingent fund; and said clerk shall at once order said books so agreed upon by the board, of the publisher, and the publisher, on the receipt of such order, shall ship such books to said clerk without delay, and the clerk shall forthwith examine such books, and, if found right and in accordance with said order, remit the amount to said publisher, and the board of education shall pay all charges for the transportation of such books out of the school contingent fund; but if said boards of education can, at any time, secure of the publishers books at a price less than said maximum price, it shall be its duty so to do, and may, without unnecessary delay, make effort to secure such lower price before adopting any particular text-book.

[Sale to pupils.] Each board of education shall have power to, and shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district, and for that purpose may make such contracts and take such security as they may deem necessary for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent of the cost price shall be paid therefor, and said books shall be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent. therefor added, and the proceeds of such sale shall be paid into the contingent fund of such district, and whoever receives said books from the board of education for sale as aforesaid to the pupils, and fails to account honestly and fully for the same,

or for the proceeds to the board of education when required, shall be guilty of embezzlement and punished accordingly.

[**Local dealers.**] Provided, however, boards of education may contract with local retail dealers to furnish said books at prices above specified, the said board being still responsible to the publishers for all books purchased by the said board of education.

[**Removal—Free books.**] And when pupils remove from any district, and have text-books of the kind adopted in such district, and not being of the kind adopted in the district to which they remove, and wish to dispose of the same, the board of the district from which they remove, when requested, shall purchase the same at a fair value thereof, and resell the same as other books; and nothing in this act shall prevent the board of education from furnishing free books to pupils as provided by law. That for the purpose of carrying into effect the foregoing provisions of this act and paying the expenses incident thereto, there be and is hereby appropriated out of any money in the state treasury, to the credit of the general revenue fund, not otherwise appropriated, the sum of five hundred dollars, to be disbursed and paid on the allowance and order of said commissioner. (92 v. 282.)

As to free books see § 4126 (§ 239).

Purpose of Text-book Law.

Price to be Paid.

Selection of Text-book.

Disposal of Books to Pupils.

PURPOSE OF TEXT-BOOK LAW.—The fierce rivalry among publishers of text-books sometimes led them to pursue courses in securing the adoption of books published by them for certain schools that was not always honorable to them nor members of the board of education. Charges of corruption were frequently made. In order to secure to the people of the state the best result, possibly, in the price to be paid for books, as well as remove all temptation that might be offered to members of the board of education, the above and the four preceding sections were enacted in a statute law.

SELECTION OF TEXT-BOOKS.—In order for the law to meet the full measure intended, it must be strictly observed. It will be presumed that a committee on text-books has been appointed. See note under section 3987 (§ 95). This committee should be ready to report on the third Monday in August, and at that meeting or an adjourned meeting within two weeks

after that date, is the time within which the series of text-books must be adopted. This committee, if properly attending to the duties imposed upon it, will have had the matter under consideration since the middle of the preceding June, this being the time that the commissioner of schools should have furnished to the board of education the names and addresses of all publishers who are entitled to furnish the required text-books, see section 4020-12 (§ 212). In order to adopt a certain text-book it will require a majority vote of all members elected and this vote must be an aye and nay one, section 3982 (§ 89). When a certain line of text-books are adopted it can not be changed for a period of five years, unless three-fourths of all the members elected assent thereto at the regular meeting of the board. Such time begins to run from the date of the official adoption of its text-book and not from the time it is brought into actual use. (State v. Board of Education, 35 O. S., 386.) No book can be adopted except at the regular meeting in August, or a regularly adjourned meeting within two weeks from that time.

Committee on teachers and text-books of township boards of education to recommend changes in text-books, etc., see section 3920 (§ 34).

Where the committee on text-books of a school board recommended the adoption of a certain series of books, and the school board amended the report and then adopted it, this "determines" the books to be used and exhausts the power to change them, and a majority vote ten days afterwards to reconsider is a nullity. (State ex rel. v. Board of Education, 35 O. S., 368.)

The adoption of the books being in connection with a proposition of the publisher, its terms as to prices are conditions of the adoption. (*Id.*)

A rule of the board, that resolutions for changing text-books shall be referred to a committee and delayed four weeks, is a reasonable one under R. S., section 3985 (§ 92), and binding. Nor can a bare majority abrogate it, for section 3982 (§ 89) must be construed with section 3985 (§ 92). Hence, an adoption of a text-book by a majority, without reference to the committee and four weeks' delay, will not be enforced by *mandamus* on the application of a parent who has purchased the new books. (State, ex rel., v. Board of Education of Cleveland et al, 2 C. C., 510.)

CHANGE OR RE-ADOPTION OF TEXT-BOOKS.—The statute has provided that after text-books have been adopted on the 3d Monday in August, that the books so adopted shall not be changed nor any part altered or revised, nor shall any other text-book be substituted therefor for five years after the selection of the date and adoption thereof without the consent of three-fourths of all the members elected, given at a regular

meeting. These provisions of the statute have been the subject of considerable discussion, and diametrical opposite opinions have been rendered by different state school commissioners as to their meaning, especially as to the length of time that the re-adopted or substituted book should remain without change. In a circular issued by the then state school commissioner, shortly after the statute was adopted a construction was placed upon this provision in a circular sent out and it was there said: "It is the meaning of the text-book law that every adoption is for the full period of five years whether it be an original adoption, a substitution or a re-adoption," so according to that interpretation, if a text-book was changed after it was adopted or another substituted for one that had been adopted, the newly adopted or substituted text-book could not be changed for five years except by a three-fourth vote.

The present state school commissioner, however, holds that "After text-books have been adopted, any substitution by three-fourth vote of all the members of the board will be for the remainder of the five year period for which the books displaced were adopted."

Which of these two opinions, both of which seem to have been coincided in by the Attorney Generals in office at the time that they were enunciated will finally prevail, only the courts can determine. There are arguments on both sides.

It would seem from the fact that the state school commissioner is required in June of each year to notify the various boards of education of the names and addresses of all publishers, who shall have during the year, agreed in writing to furnish books, etc., that it is contemplated by the statute that text-books ought not to be changed or re-adopted other than at the August meeting; and in addition to this it must be recognized that it is not for the advantage of schools to have text-books changed during the time of the school year, and that the August meeting being in the time of vacation, that that is the time when it is intended that the text-book question should be brought up.

In opposition to this, however, is to be considered the policy of the law not to have frequent changes in school books adopted, and, therefore, whether the book be adopted at an August meeting or some subsequent time, it should continue to be the adopted book until five years have expired from the time that it was adopted.

That this is a correct view is the opinion of eminent attorneys. In the recent case of *Lenhart v. Board of Ed.*, Muskingum Common Pleas, Vol. 5, Nisi Prius Repts., N. S., the court holds that where a book was adopted on May 2, 1906, it could not be replaced by one adopted in September, 1906, by a majority vote of the board, and that the book adopted in May was for five years, unless changed by a three-fourths vote, etc. The statute, however, seems to contemplate that the course of study and text-books should be determined at the August meeting, and if the view is to be adopted that text-books may be adopted

at any time during the year we would have contracts expiring, not in vacation of the schools or at a time when the law contemplated that text-books should be adopted, but at all times of the year. Then, too, the statute itself does not say that a new text-book may be adopted at any other time than the August meeting. It merely says that another text-book may be substituted for one that is already adopted.

The fact that the word "substituted" is used instead of the word "adopted," would also give strength to the view of the present state school commissioner, that when a text-book is substituted for one already adopted, that the time or period for which such substitution would run would be the remainder of the unexpired five years for which the original adoption was made.

The statute, however, is not clear upon this question. It seems that the legislature wanted to secure two things: first, that text-books should not be frequently changed, and secondly, to leave a power with the board to make a change if three-fourths of the members of the board deem it advisable.

It is certainly not within the general policy of the law that this matter of adopting school books should come up at any period of the year and the present school commissioner has held that where contracts expire in the next August, that during the preceding month text-books could not be adopted even if by a unanimous vote.

There are strong reasons of policy requiring all adoptions of text-books to be made at the August meeting.

Section 2834b (§ 95), which requires that the clerk shall first certify that the money required for the payment of the obligation or appropriation was in the treasury to the credit of the fund, etc., having been declared to be unconstitutional, *Bower v. Fulton*, 28 C. C. 624, as being a law of a general nature and not of uniform operation, it would be doubtful whether it would be applicable to the adoption of text-books.

I am not so sure, however, that this view of the Circuit Court will be adopted by the Supreme Court, for while it may be a law of a general nature, yet as the statute classifies schools, which is held to be a constitutional power of the legislature, it may be that a statute made to apply to such classifications may be valid, although under other circumstances it would be held to be unconstitutional, as being a law of a general nature which would not have a uniform operation throughout the state. It being uniform as to its application to all in the recognized class.

PRICE TO BE PAID.—It will be observed section 4920-11 (§ 211) that the prices as given to the state commissioner of schools are maximum. There is nothing in the law preventing a board of education from selecting books which can be purchased below such maximum price, nor is there anything to prevent the board of education from making the best terms

for its patrons that it can, among the various publishers who are authorized to contract for such text-books. The statute directs that at the regular meetings in April and August that the number of books that the school may need be determined, and at the next regular meeting an order be drawn, and if the books on their receipt, and they are required to be sent at once, be found right and in accordance with the order, the clerk is to remit the amount due the publisher.

DISPOSAL OF BOOKS TO PUPILS.—The board, having ordered the books, may sell them to the pupils at a profit not to exceed ten per cent. of the price paid the publisher, the money to be returned to the contingent fund. If the board of education does not wish to undertake this purchase of books they may make arrangements with their local dealers to do the same. Such local dealer, however, would be restricted to the same profits. If the board is in doubt about the price of any book, they should make inquiry of the state commissioner of schools.

§ 215. [Purchase of Howe's Historical Collections of Ohio for schools; payment.] (§ 4020-15.) Sec. 1. The boards of education of city, village, township and special school districts in the state be and are hereby authorized to purchase for each school in either of said districts one copy of "Howe's Historical Collections of Ohio," to be used as a reference book in the study of the history of the state; provided that said book shall be in quality, style, binding and finish equal to the present published edition of said work, bound in half Russia leather, and shall cost not to exceed three dollars per volume, for each set of three volumes; provided further, that the price of the books and cost of transportation shall be paid out of the contingent fund of such district. (89 v. 241.)

§ 216. [Care and preservation of books.] (§ 4020-16.) Sec. 2. Said books, during the vacations of schools, or when the schools are not in session, shall be taken care of in the manner that maps, globes, dictionaries and other school apparatus are cared for and preserved. (89 v. 241.)

§ 217. [Physical training in city schools.] (§ 4020-17.) Sec. 1. Physical training shall be included in the branches to be regularly taught in public schools in city school districts, and in all educational institutions supported wholly or in part by money received from the state, and it shall be the

duty of the boards of education of city school districts, and boards of such educational institutions to make provisions in the schools and institutions under their jurisdiction for teaching of physical training, and to adopt such methods as shall adapt the same to the capacity of the pupils in the various grades therein; and other boards may make such provisions. The curriculum in all normal schools of this state shall contain a regular course on physical education. (97 v. 364.)

§ 218. [Manual training departments, commercial departments and kindergartens authorized.] (§ 4020-18.) Sec. 1. Any board of education may establish and maintain manual training and commercial departments and kindergartens in connection with the public school system and pay the expenses of establishing and maintaining said schools from the public school funds, in the same manner and from the same funds as other school expenses are paid. (97 v. 364.)

(4020-19) Sec. 1. Repealed April 25, 1904.

(4020-20) Sec. 2. Repealed April 25, 1904.

(4020-21) Sec. 1. Repealed April 25, 1904.

(4020-22) Sec. 2. Repealed April 25, 1904.

§ 219. [Instruction in the effects of alcholic drings and other narcotics; made a regular branch of study.] (§ 4020-23.)

Sec. 1. The nature of alcholic drinks and other narcotics, and their effects on the human system, in connection with the various divisions of physiology and hygiene, shall be included in the branches to be regularly taught in the common schools of the state, and in all educational institutions supported wholly, or in part, by money from the state; and it shall be the duty of boards of education, and boards of such educational institutions to make suitable provisions for this instruction in the schools and institutions under their respective jurisdiction, giving definite time and place for this branch in the regular course of study; and to adopt such methods as will adapt the same to the capacity of pupils in the various grades; and to corresponding classes as found in ungraded schools; the same tests for promotion shall be required in this as in other branches. (94 v. 396; 85 v. 213.)

§ 220. [Instruction required in teachers' institutes and teachers' training schools; teachers' certificate must contain;

enforcement of law.] (§ 4020-24.) Sec. 2. In all teachers' institutes, also in all normal schools and teachers' training classes which shall hereafter be established by the state, adequate time and attention shall be given to instruction in the best methods of teaching this branch. No certificate shall be granted to any person to teach in the common schools or in any educational institution supported as aforesaid who does not pass a satisfactory examination on this subject, and the best methods of teaching the same. It shall be the duty of the state commissioner of common schools to see that the provisions in this section relating to county teachers' institutes, and schools and classes by whatever name hereafter established for training teachers, and the examination of teachers, are carried out; and said commissioner shall, each year, make full report of the enforcement of said section in connection with his annual report. (94 v. 396; 85 v. 213.)

§ 221. [**Penalty for failure to enforce law; jurisdiction of courts.]** (§ 4020-25.) Sec. 3. Any school official, or any employe in any way concerned, in the enforcement of the act, who wilfully refuses or neglects to provide for, or to give the instruction required by this act, shall be fined, and shall pay for each offense the sum of twenty-five dollars. Mayors, justices of the peace and probate judges shall have concurrent jurisdiction with the common pleas court to try the offenses described in this act and all fines, or penalties, collected under this act shall be paid into the general county school fund of the county in which such fine or penalty was collected. (94 v. 396; 85 v. 213.)

“The duty of the boards of education to make provision for instruction in the nature of alcoholic drinks and narcotics, and their effects on the human system, in connection with the subjects of physiology and hygiene, is imperative, and if these boards neglect this duty, they may be compelled to its performance by a writ of *mandamus*.

“It is evidently the intent of the law that physiology and hygiene, as well as the nature of alcoholic drinks and narcotics, shall be taught to *all* youth attending the common schools, from the infants entering school for the first time up to the senior class in the high school; and it is left to the ingenuity of boards of education and teachers to devise the kind of instruction that will be comprehensible to each class of minds

in this wide range. As to whether this teaching shall be done or not, neither boards nor teachers are allowed any discretion. It is a compulsory law of the most iron-clad character.

“The penalty of dismissal from employment can not in equity be inflicted on superintendents, principals and teachers for not giving the instruction required by the above act, until after the board of education has made proper provision for such instruction.” (Ohio School Law.)

§ 222. [German language taught, how.] (§ 4021.) Boards of education are authorized to provide for the teaching of the German language in the elementary and high schools of the district over which they have control, but said language shall only be taught in addition to, and as auxiliary to, the English language; all the common branches in the public schools shall be taught in the English language. (97 v. 364.)

§ 223. [Pupils may be sent from one district to another.] (§ 4022.) The board of any district may contract with the board of any other district for the admission of pupils into any school in such other district, on such terms as may be agreed upon by such boards; and the expense so incurred shall be paid out of the school funds of the district sending such pupils. (73 v. 243, § 64.)

1. The contract authorized by section 4022 (§ 223), Revised Statutes, for the admission of pupils from one district to the school of another, is an express contract, to be made between the boards of education of the two districts.

2. The attendance of such pupils in the school of such other district, without objection by either board, creates no liability against the board in whose district such pupils reside.

3. Said section of the statute provides that the board of education may contract for the admission of such pupils, “on such terms as may be agreed upon by such boards.” This evidently means an express agreement, evidenced by action of the board, and not a mere silent acquiescence. (The Board of Education v. The Board of Education, 49 O. S., 1893.)

“This is, of course, in no sense a transfer of the child, and as certainly not of his parents, to the district or sub-district in which he is permitted to attend school for pay.

“The tuition agreed upon is to be paid on the proper order of the clerk of the board of education which sends the child, to the treasurer of the district to which he is sent (see last clause of section 4047 [§ 267]), and it is to be disbursed by the board of this district. Neither local directors, individual members of the board of education, superintendents, nor teachers can retain or disburse it.

“Such contracts are not authorized to be made by local di-

rectors. As to pupils residing in one sub-district and seeking to attend school in other sub-districts, township boards 'shall,' as we have seen under section 4013 (§ 201), 'make such assignment of the youth of their respective districts to the schools established by them, as will, in their opinion, best promote the interests of education in their districts.' Under that section, there is, of course, no provision for paying tuition. Section 4017 (§ 206) puts 'in the boards of education the management and control of all the public schools of the district, subject *only* to the provisions of section 4018 (§ 208).' Besides this, the local board has no control of money with which to pay tuition." (Ohio School Law.)

Sub-districts are not legal entities and have not the power to sue or be sued as corporations and can not sue for tuition, etc. *Woodlawn School District v. Everdale Special School District*, Hamilton Com. Pleas, April 22, 1907.

§ 224. [Attendance when pupils live over on and one-half miles from school; payment of tuition, how computed.] (§ 4022a.) When pupils live more than one and one half miles from the school to which they are assigned in the district in which they reside, they are entitled to attend a nearer school in the same district, or if there be no nearer school in said district, they may attend the nearest school in another school district, in all grades below the high school, and in such cases the board of education of the district in which they reside shall be compelled to pay the tuition of such pupils without an agreement to that effect, but a board of education shall not collect tuition for attendance as provided herein until after notice of such attendance shall have been given to the board of education of the district where the pupils reside, but nothing contained herein shall be construed to require the consent of the board of education of the district where the pupils reside, to such attendance; said tuition shall be paid from either the tuition or the contingent funds and the amount per capita shall be ascertained by dividing the total expenses of conducting the elementary schools of the district attended, exclusive of permanent improvements and repairs, by the total enrollment in the elementary schools of the district, said amount to be computed by the month and an attendance may part of a month shall create a liability for the whole month. When the schools of a district are centralized or transportation of pupils provided, the provisions of this section shall not apply. (97 v. 334.)

A board of education of a school district is not required to admit children to a school outside of the district in which they reside, unless the school in their own is more than one and a half miles from their residence and more remote from their residence than the school to which admission is sought. *State, ex rel., v. Bd. of Ed.*, Supreme Ct., May 7, 1907.

COMMENT.—The above section is somewhat different from the original (90 v. 295), in this, that it gives the pupil the absolute right to attend a school provided only, that such school is nearer than his own school, and that he is more than one and one-half miles from the school to which he properly belongs. The former section used some language which might be construed to limit this right and require a permission of both schools affected. In the case of *Board of Education v. Board of Education*, 2 N. P., 256, the court of common pleas gave it this construction. In the higher court it was held that the assent of the school board within the district where the pupil resided was not required, but the question whether or not permission must be first acquired from the school board where the pupil desired to attend, outside of his district, by the facts of that case, was not decided. The higher courts merely held that the consent of the Board of Education of the school within the child's own district was not required. *The Board of Education v. Board of Education*, 10 C. C., 617, affirmed, 54 O. S., 643. In this case, however, it was held that the distance of the child's residence is one and one-half miles, by the most direct highway (see *Board of Education v. Board of Education*, 58 O. S., 390) from the school house to the child's residence. The only limitation put upon the power of the board of education to collect tuition for such attendance is that it must give notice to the board of education of the district where the pupil resides, but this does not affect the right which seems to be an absolute one of the pupil attending such school. In the case above cited (10 C. C., 617) the court gives the following as its idea for the existence of the law:

"It seems clear that the object of the supplementary section was to obviate a well known inconvenience, due to the arrangement of sub-districts and the location of school houses in many parts of the state, it being the purpose of the legislature to provide for school children, who, if confined to their own districts, would be required to travel an inconvenient and burdensome distance, by giving them the right to attend a more convenient school in an adjoining district, independently of any contract between the respective boards of education."

The above section has been declared unconstitutional by the circuit court of Hamilton County, as it does not have a universal operation as to all children in the same condition or category, and therefore contravenes section 26, article 2, of the Constitution, which provides "that all laws of a general nature shall have a universal operation throughout the state." (*Cincinnati School District v. Oakley District*, 27 C. C., 824.) This decision was reversed on other grounds. (74 O. S., 477.)

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§ 225. [In what branches children must be taught; necessary time of attendance; excuse; appeal in case of refusal to excuse.] (§ 4022-1.) All parents, guardians and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, English grammar, geography and arithmetic. Every parent, guardian or other person having charge of any child between the ages of eight and fourteen years shall send such child to a public, private or parochial school, for the full time that the school attended is in session,

[Length of required attendance.] which shall in no case be for less than twenty-four weeks, and said attendance shall begin with the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city or other districts having such superintendent, or by the clerk of the board of education in village, special and township districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing, either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of education in special, village and township districts not having such superintendent, to teach the branches named in this section. In case such superintendent, principal or clerk refuse to excuse a child from attendance at school, an appeal may be taken from such decision to the probate judge of the county, upon the giving of a bond, within ten days after such refusal to the approval of said judge, to pay all the cost of the appeal, and the decision of the probate judge in the matter shall be final.

[Age of pupils.] All children between the ages of fourteen and sixteen years, not engaged in some regular employment, shall attend school for the full term the schools of the district in which they reside are in session during the school year, unless excused for [the] reasons above named. Any parent, guardian, or other person, having care of a child between the ages of eight and fourteen years, who shall, in violation of the provisions of this section, fail to place such child in school at the com-

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mencement of the annual school term within the time prescribed in this section, shall upon conviction be fined not less than five dollars nor more than twenty dollars.

[**Against parent.**] And upon the failure or refusal of any such parent, guardian, or other person to pay said fine, then said parent, guardian, or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days. (95 v. 615; 90 v. 285; 86 v. 333; 89 v. 389; 87 v. 316, 143.)

IMPORTANCE OF LAW.—This compulsory law is one of the most important educational measures of the last twenty-five years. While the law as it now exists in its amended form is easy of interpretation, its success will depend largely upon the interest taken in it by school superintendents, teachers and boards of education. Teachers should never forget that the treatment of the pupil after he has been compelled to attend school is a powerful factor in successfully carrying out the true spirit of this law. (Com.)

SCHOOL WEEK.—"According to the statute (section 4016 [§ 205]) a school week consists of five days. And as this section says that children between eight and fourteen years shall be sent to school in city districts not less than twenty weeks in each year, and in other districts not less than sixteen weeks, the obvious and rational meaning is that children in the former districts must be in actual attendance at school not less than one hundred days, and in the other districts not less than eighty days in the year. Any other interpretation of this act might readily work to defeat the whole purpose of the law, for pupils might be on the roll twenty or sixteen weeks and not be in attendance more than half the time, as 'enrollment' is frequently defined. From the spirit that breathes through this whole compulsory act, it is evident that a proper construction of its language should always, in doubtful cases, be in favor of the education of that class of youth for whose benefit the law was specially made.

"It will be seen that no mention is made in this act of the teaching of United States history and physiology and hygiene. The law is mandatory, of course, as to the branches mentioned in it, but as pupils to be affected by the act must necessarily be classified with pupils studying the additional branches just named, it would be an unreasonable interpretation of the law to hold that instruction in these branches is prohibited by it to any of the pupils thus classified together. Of the value of such instruction no intelligent person can entertain a doubt." (Ohio School Law.)

LAW CONSTITUTIONAL.—Prior to the last week of April, 1890, the clerk of the board of education of Toledo, Ohio, acting under the provisions of section 11, furnished through the truant officer the proper blanks to the Rev. Patrick F. Quigley, a Catholic priest in charge of St. Francis De Sales parish of such city, and by virtue of his pastorate the principal of the parochial schools of the parish, and requested him to report the names of the pupils of such schools, the date of birth, the number of days present, the number of days absent, the number of days truant, and their residence.

Dr. Quigley received the blanks, but refused to make the report required by the law.

For this willful refusal to make the reports required by law, the Doctor was indicted at the April term, 1890, of the court of common pleas of Lucas county, and in May, 1891, was tried and convicted. A motion in arrest of judgment was argued before Judge Pugsley and overruled.

The syllabus of his decision is as follows:

"1st. The neglect of the principal of a school to make the report required by section 11 of the act of April 25, 1890, is an offense against the act, and is punishable by a fine as prescribed in section 13.

"2d. Said offense is within the jurisdiction of the court of common pleas, and may be prosecuted by indictment."

To reverse the judgment of the common pleas, error was prosecuted to the circuit court.

The syllabus of the decision of the circuit court (Scribner, Haynes and Bentley, JJ.), rendered by Judge Haynes, is as follows:

The statute passed by the General Assembly of the State of Ohio, April 25, 1890, entitled "An act to compel children under fourteen years of age to attend school a certain length of time each year": *Held* to be constitutional.

The provisions of section 11 of said statute apply to the principals and teachers of parochial schools, such schools being included in the term "private schools."

1st. The proviso to section 9 of the act is: "Provided that this law shall not be operative in any school district where there are not sufficient seating accommodations to seat children compelled to attend school under the provisions of this act": *Held*, the provision does not require the furnishing of seating accommodations for children attending private schools.

Held—further, that the burden of proving that there was not sufficient seating capacity was incumbent, in the first instance, upon the defendant; but upon the whole evidence the burden of proof remains with the prosecution.

Section 13 of the act, as amended, does not give mayors, justices of the peace and probate judges *exclusive* jurisdiction

to try persons or officers for neglecting to perform duties required of them under said act, but the jurisdiction conferred upon them is concurrent with that of the court of common pleas. In criminal prosecutions the state has a right to demand and have a struck jury to try the case. . . .

To reverse the judgments of the common pleas and circuit courts, Father Quigley prosecuted proceedings in error in the supreme court of the state. . . .

On May 10, 1892, the Supreme Court, by a unanimous bench, affirmed the judgments of both the lower courts, thus establishing the validity and constitutionality of the compulsory education law, and the jurisdiction of the common pleas court to try and punish the offense upon indictment. (Quigley v. State, 5 C. C., 638; affirmed by Supreme Court, 27 Bull., 332.)

§ 226. [Employment of children under sixteen years of age; penalty.] (§ 4022-2.) No child under sixteen years of age shall be employed or be in the employment of any person, company or corporation during the school term and while the public schools are in session, unless such child shall present to such person, company or corporation an age and schooling certificate herein provided for. An age and schooling certificate shall be approved only by the superintendent of schools, or by a person authorized by him, in city or other districts having such superintendent, or by the clerk of the board of education in village, special and township districts not having such superintendent, upon a satisfactory proof of the age of such minor and that he has successfully completed the studies enumerated in section 4022-1 (§ 225) of the Revised Statutes of Ohio; or if between the ages of fourteen and sixteen years, a knowledge of his or her ability to read and write legibly the English language. The age and schooling certificate shall be formulated by the state commissioner of common schools and the same furnished, in blank, by the clerk of the board of education. Every person, company or corporation employing any child under sixteen years of age, shall exact the age and schooling certificate prescribed in this section, as a condition of employment and shall keep the same on file, and shall upon request of the truant officer herein provided for, permit him to examine such age and schooling certificate. Any person, company or corporation, employing any minor contrary to the provisions of this section shall be fined not

less than twenty-five nor more than fifty dollars. (April 25, 1904; 95 v. 616; 90 v. 285; 86 v. 334, § 2.)

OTHER SECTIONS OF REVISED STATUTES RELATING TO
CHILD LABOR.

§ 226a. [**Child employed in factory, etc.**] (§ 6986-7.) No child under the age of fourteen years shall be employed in any factory, workshop, mercantile or other establishment, directly or indirectly; and no child under fourteen years of age shall be employed at any work performed for wages or other compensation, or in assisting any person employed as a wage-earner, when the public schools in which district such child resides are in session. (93 v. 123.)

§ 226b. [**Child employed in mine.**] (§ 302.) No child under fifteen years of age shall be allowed to work in any mine, during the school term of the public schools in the district in which such minor resides, and no child under fourteen years of age shall be employed in any mine during the vacation interim of the public schools in the school district in which such minor resides, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; he shall also keep a record of all minors employed by him, or by any person employed in said mines, giving the name, age, place of birth, parents' name and residence, with character of employment, and he shall demand from such minor proof that he has complied with the requirements of the school laws; and it shall be the duty of the mine inspector to inspect such record and to report to the chief inspector of mines the number of minors employed in or about such mines and to enforce the provisions of this section. (94 v. 181.)

Notice to Employers of Youth.

To[Here insert name of person, company or corporation]:

Your attention is respectfully called to sections 4022-2, 4022-3, 4022-5 and 4022-11, 6986-7, R. S., to compel the elementary education of children.

In compliance with the provisions of this act, you are requested to return to me on this blank the names, ages and add residences of all minors under fourteen years of age employed by you, also all minors between fourteen and sixteen years of age, and to state whether you

have a certificate from the superintendent of schools, or clerk of the board of education that authorizes you to employ such minors.

.....,
Clerk of Board of Education.

Names of Minors.	Age.	Residence.	Certificate—Yes or No.
.....
.....
.....
.....
.....
.....
.....
.....

In cities this notice may be signed by the superintendent of schools.

This certificate must be kept on file until the youth reaches the age of sixteen years and must be accessible to the Truant Officer and the Inspector of Factories at all times.

Age and Schooling Certificate.

(For minors under sixteen years of age. Employed at Labor.)

This certifies that I am the of and that was
(Parent or guardian) (Name of child)
born at, in the county of, state of, on the
day of, 19.., and is now years, months old.

.....,
(Name of parent or guardian.)

The said having satisfactorily verified the foregoing state-
(Name of parent or guardian)
ment, I hereby approve the above certificate of; height,
(Name of child)

feet inches; complexion,; hair,; having no suf-
ficient reason to doubt that is of the age herein certified.

I hereby certify that can read at sight and write legibly
(Name of child)
simple sentences in the English language.

This certificate belongs to, and is to be surrendered to
(Name of child)
whenever leaves the services of the person, company or corpo-
ration holding the same; but if not claimed by said child within thirty
days from such time, it shall be returned to the superintendent of
schools.

Signature:
....., 190.. Supt. of Schools.

§ 227. [Attendance of minors in certain cases; employment of such minors; penalty.] (§ 4022-3.) All minors over the age of fourteen and under the age of sixteen years, who can not read and write the English language shall be required to attend school as provided in section 4022-1 (§ 223) of the Revised Statutes of Ohio, and all the provisions of said section shall apply to said minors; provided, that such attendance shall not be required of such minors after they have secured a certificate from the superintendent of schools, in districts having superintendents or the clerk of the board of education in districts not having superintendents, that they can read and write the English language. No person, company or corporation shall employ any such minor during the time schools are in session, or having such minor in their employ shall immediately cease such employment, upon notice from the truant officer who is hereinafter provided for. Every person, company or corporation violating the provisions of this section shall be fined not less than twenty-five nor more than fifty dollars. (95 v. 617; 90 v. 286; 86 v. 334; §§ 3, 4; 87 v. 143.)

§ 228. [Juvenile disorderly persons.] (§ 4022-4.) Every child between the ages of eight and fourteen years, and every child between the ages of fourteen and sixteen years unable to read and write the English language, or not engaged in some regular employment, who is an habitual truant from school, or who absents himself habitually from school, or who, while in attendance at any public, private or parochial school, is incorrigible, vicious or immoral in conduct, or who habitually wanders about the streets and public places during school hours having no business or lawful occupation, shall be deemed a juvenile disorderly person, and be subject to the provisions of this act. (95 v. 617; 90 v. 286; 86 v. 335, § 5; 90 v. 57; 88 v. 136.)

To Whom Statute Applies.
Habitual Truancy, etc.
Absents Itself Habitually.
Incorrigible.

Vicious and immoral.
Habitual Wandering About
the Street.

TO WHOM STATUTE APPLIES.—Every child between the ages of eight and fourteen years who does not comply with the law is included within the terms of the statute, and every

child between fourteen and sixteen years, if unable to read and write the English language, is included, and every child between the ages of fourteen and sixteen years of age if able to read and write, but who is not engaged in some regular employment will come within the terms of the statute.

HABITUAL TRUANCY, ETC.—The statute gives a number of acts which will constitute a sufficient reason to cause a child to be considered a juvenile disorderly person subject to punishment. The first is, habitual truancy. "Habitual" means a constant and frequent re-occurrence of the same act and it may be a matter of some difficulty to always determine just what will constitute "habitual truancy."

If a child should be absent but one day in a month it might be doubted whether this would come within the meaning of the term. But if he should be absent one day every week or one day every two weeks and kept this up for some four or six weeks without a good and sufficient cause he might be considered as habitual truant. Even if he were only absent once a month, if he kept up the habit for four or five months he might be considered as an habitual truant. If he should absent himself a half a day each week for three or four weeks, I should likewise consider him an habitual truant.

In the absence of more definiteness upon this question it might be well for the board of education to pass a rule stipulating what should be considered as habitual truancy.

ABSENTS ITSELF HABITUALLY.—This term would seem to include the same as an habitual truant and adds nothing particularly to the statute.

INCORRIGIBLE.—The pupil need not absent himself from school in order to come within the above statute, if while at school he is incorrigible, vicious or immoral he may be punished. The word "incorrigible" generally means incapable of being corrected or reformed. So if a pupil while in school would show such obstinacy that the teacher would be unable to cause him to cease his objectionable habits, he would come within this term. Thus if a pupil would absolutely refuse to study or get his lessons, or attend to anything properly required of him, and the teacher could not compel him to attend to such matters he would be incorrigible.

VICIOUS AND IMMORAL.—The word "vicious" no doubt in the statute means that the child should be guilty of acts that are harmful to others, such as beating another child in the school or injuring the teacher, or needlessly breaking school furniture or destroying his books or the property of other children.

"Immoral" means a commission of an act that is hostile to

the welfare of the general public or one that is inconsistent with moral rectitude; contrary to the moral or divine law, and sometimes is used synonymously with vicious, but in this statute probably means any lewd conduct towards his fellow pupils, swearing, stealing, obscene conduct and various matters of that kind, and particularly such as would destroy the morality of the school or affect a proper discipline of the pupils drinking intoxicants, chewing tobacco, smoking cigarettes and matters of that character might properly be held to come within this term.

HABITUAL WANDERING ABOUT THE STREET.—But even if a child under the age of sixteen years were not an habitual truant nor guilty of any of the above charges, if he wandered about the streets habitually, and public places during school hours, having no business or occupation, he would come within the terms of the above act and be considered a juvenile disorderly person.

§ 229. [Truant officers; powers and duties.] (§ 4022-5.)

To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In city districts the board of education shall appoint and employ one or more truant officers; in special, village and township districts the board of education shall appoint a constable or other person as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him. The truant officer shall be vested with police powers, the authority to serve warrants, and shall have authority to enter workshops, factories, stores and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise, to enforce this act; he is also authorized to take into custody the person of any youth between eight and fourteen years of age, or between fourteen and sixteen years of age when not regularly employed or when unable to read and write the English language, who is not attending school, and shall conduct said youth to the school he has been attending, or which he should rightfully attend. The truant officer shall institute proceedings against any officer, parent, guardian, person or corporation violating any provisions of this act, and shall otherwise discharge the duties described in this act, and perform such other services as the superintendent of schools or the board of education may deem necessary to preserve the morals and secure the good conduct of school children, and

to enforce this act. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of schools and the board of education; and he shall make daily reports to the superintendent of schools during the school term in districts having superintendents, and to the clerk of the board of education in districts not having superintendents, as often as required by him. Suitable blanks for the use of the truant officer shall be provided by the clerk of the board of education. (95 v. 617; 90 v. 286; 86 v. 335, § 6; 87 v. 325, 144.)

APPOINTMENT OF TRUANT OFFICER, ETC.—While the above section is somewhat differently worded in reference to the persons who should be appointed truant officer, yet they are practically the same. The board should exercise considerable care in this selection, for the statute invests the officer with police power, and therefore he should be one who is possessed of sufficient discretion to properly exercise such power, and especially should be a person who will fearlessly, but not in a meddling manner, enforce the statute. My judgment would be, that he is an officer within the general meaning of that term, and should take an oath of office before entering upon the discharge of his duties. The provision seems to be mandatory upon the board of education, for it uses the word “shall appoint.” It does not limit his term of service and therefore the board when making the appointment should provide for the length of his services. In no case could he act longer than the term of the board which elected him, and in all cases he could be removed at any time that the board would think proper. There seems to be no limitation upon the vote requisite to elect such officer and therefore the same would be controlled by the ordinarily parliamentary rules in the absence of any special rule of the board to the contrary. The statutes specifically point out his duties and requires particularly that he shall keep a record of his transactions.

Report of Truant Officer.

To the Clerk of the Board of Education of County, Ohio:

In compliance with your requirements, I hereby submit my report for, 190..., as shown below.

.....,
Truant Officer of said Township.

§ 231. [Proceedings in case of truancy; penalties.] (§ 4022-7.) On the request of the superintendent of schools or the board of education, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy within the district and warn the truant and his parents, guardian or other person in charge, in writing, of the final consequences of truancy if persisted in. When any child between the ages of eight and fourteen years, or any child between the ages of fourteen and sixteen years who can not read and write the English language or who is not regularly employed, is not attending school, in violation of the provisions of this act, the truant officer shall notify the parent, guardian or other person in charge of such child, of the fact, and require such parent, guardian or other person in charge, to cause the child to attend some recognized school within two days from the date of the notice; and it shall be the duty of the parent, guardian or other person in charge of the child so to cause its attendance at some recognized school. Upon failure to do so, the truant officer shall make complaint against the parent, guardian or other person in charge of the child, in any court of competent jurisdiction in the city, special, village or township district in which the offense occurs, for such failure, and upon conviction, the parent, guardian or other person in charge shall be fined not less than five dollars nor more than twenty dollars, or the court may in its discretion, require the person so convicted to give a bond in the penal sum of one hundred dollars with sureties to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days thereafter, and to remain at such school during the term prescribed by law; and upon the failure or refusal of any such parent, guardian or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parent, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days. (95 v. 618; 90 v. 287; 86 v. 336, §§ 8, 9.)

Notice to Parent or Guardian.

State of Ohio, County, ss.:

To

You are hereby notified that, a child between the ages of and years, under your charge, is not attending school; that such non-attendance is in direct violation of the law and without legal excuse.

You are hereby required to cause said child to attend some recognized school within two days from the date of this notice, and you are warned that if the truancy of said child is persisted in, the final consequences will be as provided by law, as indorsed hereon.

Witness my hand this day of, 19..

.....
Truant Officer.

..... school district, county, Ohio.

Print sections 4022-7 and 6986-7, R. S., on reverse side of form.

Notice to Truant.

State of Ohio, County, ss.:

To, a child between the ages of and years.

You are hereby notified that you are and will be required to attend some recognized school within two days from the date of this notice, and you are hereby warned that if this notice is not complied with, the final consequences will be as provided by law as indorsed hereon.

Witness my hand this day of, 19..

.....
Truant Officer.

..... school district, county, Ohio.

Print section 4022-8 in full on reverse side of form.

Complaint Against Parent or Guardian.

To, of

I,, duly appointed according to law by the board of education township,* county, Ohio, as truant officer of said township,* hereby make complaint that is of, and has legal charge and control of, a minor, between the ages of and years:

That the said is, under the construction of the law, a juvenile disorderly person:

That in accordance with the statutes in such cases made and provided, I did on the day of, 190., notify the said that the said was not attending any school, and requiring that the said should cause the said to attend some recognized school within five days from the date of said notice:

That the said has failed to comply with said requirements of said notice, as provided by law in such cases.

In witness whereof, I have hereunto set my hand this day of, 190..

.....
Truant Officer of Township,* County, Ohio.

Complaint Against Juvenile Disorderly Person.

To, of

....., Ohio,, 190..

I,, duly appointed according to law, by the board of education of township,* county, Ohio, as truant officer of said township,* hereby make the following complaint:

That in accordance with the statute in such cases made and provided, I did, on the day of, 190.., notify, the of, and having legal charge and control of, a minor, between the ages of and years, that the said was not attending any school, and requiring that the said should cause the said to attend some recognized school within five days from the date of the said notice:

That the said having failed to comply with the requirements of said notice, I made complaint as provided by law in such cases.

Now, whereas, the said having proved inability to cause the said to attend said recognized school, I hereby make such cases made and provided.

complaint that the said is a juvenile disorderly person within the meaning of the statute, and subject to the penalties of the law in

In witness whereof, I have hereunto set my hand this day of, 190..

.....
 Truant Officer of Township,* County, Ohio.

Warrant for the Arrest of a Juvenile Disorderly Person.

The State of Ohio, County, ss:

To, Truant Officer (or any Constable or Policeman), greeting:

Whereas, there has been filed with me an affidavit, complaining that, under the provisions of an act passed by the General Assembly, April 15, 1889, to compel children under fourteen years of age to attend school a certain length of time each year, is a juvenile disorderly person: these are, therefore, to command you to take the said and safely keep so that you have body forthwith before me, or any court of competent jurisdiction in said county, to answer the said complaint, and be further dealt with according to law.

Given under my hand, this day of, 190..

.....

(Here write name of office.)

Commitment.

State of Ohio, County, Township (Village, District or City), ss:

By (name of office), to any truant officer (constable or policeman) for the said township (city or village):

These are to command you in the name of the people of the state of Ohio to take and convey to (here insert the name of the juvenile reformatory or county children's home) the body of, who, being charged before me on the oath of, truant officer, with being a juvenile disorderly person, under this act, I caused the said to be brought before me on said charge, and I proceeded to inquire into

* "Village district" or the name of the city may be written in these places instead of township.

the matter in his presence, and, having duly considered the said matter, was convicted on competent testimony of being a juvenile disorderly person.

And I, having been satisfied by sufficient proof that the said is a child between the ages of eight and fourteen years and is of the age of years, having sufficient bodily health and mental capacity to render attendance and instruction at some public or private school expedient and practicable, was adjudged by me to be a proper subject to be committed to the

Now, therefore, you (here insert name of office) are hereby commanded to receive the said, who is hereby committed by me to your care in said county children's home (or juvenile reformatory), there to be restrained and detained and sent to school until such child shall arrive at the age of sixteen years, unless sooner discharged by the board of trustees of said home (or reformatory).

Given under my hand and seal this day of, in the year of our Lord one thousand nine hundred and

..... [SEAL.]

(Here insert the name of office.)

§ 232. [Proceedings against juvenile disorderly persons.]
 (§ 4022-8.) If the parent, guardian or other person in charge of any child shall, upon the complaint under the last section for failure to cause the child to attend a recognized school prove inability to do so, then he or she shall be discharged, and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of section 4022 (§ 228) of the Revised Statutes of Ohio. If such complaint be made before any mayor, justice of the peace, or police judge, it shall be certified by such magistrate to the probate judge. The probate judge shall hear such complaint, and if he determine that the child is a juvenile disorderly person within the meaning of section 4022-4 (§ 228) of the Revised Statutes of Ohio, he shall commit the child if under ten years of age, and eligible for admission thereto, to a children's home, or if not eligible, then to a house of refuge if there be one in the county or to the boys' industrial school or the girls' industrial home, or to some other juvenile reformatory. No child over ten years of age shall be committed to a county children's home, and any child committed to a children's home, may on request of the trustees of such home and it being shown that it is vicious and incorrigible, be transferred by the probate judge to the boys' industrial school or the girls' industrial home. A child committed to any juvenile reformatory under this section, shall not be detained there beyond the age of sixteen years and may be discharged sooner

by the trustees under the restrictions applicable to other inmates. Any order of committment to a juvenile reformatory may be suspended, in the discretion of the probate judge, for such time as the child may regularly attend school and properly conduct itself. The expense incurred in the transportation of a child to a juvenile reformatory and the costs in the case in which the order of committment is made, or the child discharged, or in which judgment is suspended, shall be paid by the county where the offense was committed, after the manner provided in section 759 of the Revised Statutes of Ohio. Provided, further, that if for any cause the parent, guardian or other person in charge of any juvenile disorderly person as defined in section 4022-4 (§ 228) of the Revised Statutes of Ohio, shall fail to cause such juvenile disorderly person to attend a school, then complaint against such juvenile disorderly person shall be made, heard and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school. (95 v. 619; 90 v. 288; 86 v. 337, § 8; 87 v. 325, 144.)

§ 233. [Relief to enable child to attend school required time.] (§ 4022-9.) When any truant officer is satisfied that any child, compelled to attend school by the provisions of this act, is unable to attend school because absolutely required to work, at home or elsewhere, in order to support itself or help support or care for others legally entitled to its services, who are unable to support or care for themselves, the truant officer shall report the case to the authorities charged with the relief of the poor, and it shall be the duty of said officers to afford such relief as will enable the child to attend school the time each year required under this act. Such child shall not be considered or declared a pauper by reason of the acceptance of the relief herein provided for. In case the child, or its parents or guardian, refuse or neglect to take advantage of the provisions thus made for its instruction, such child may be committed to a children's home or a juvenile reformatory, as provided for in section 4022-8 (§ 232) of the Revised Statutes of Ohio. In all cases where relief is necessary it shall be the duty of the board of education to furnish text-books free of charge and said board may furnish any further relief it may deem necessary, the expenses incident to furnishing said

books and the relief to be paid from the contingent funds of the school district. (95 v. 620; 90 v. 289; 86 v. 337, § 8.)

“The spirit of this law is a liberal one, and the evident purpose of the act is that no child in Ohio, however poor and humble, shall fail to receive the rudiments of a school education. Where night school are established, they can be made available for the instruction of the class of children described in this section. The import of the last part of the section seems to be that the superintendent of schools or the board of education may, after all other means have been exhausted, pay the expense of the private tuition of these poor children out of the public school fund. (Ohio School Law.)

See § 239 (§4026).

§ 234. §As to institution of deaf and dumb or institution for blind.] (§ 4022-10.) The provisions of this act shall apply to children entitled under existing statutes, to attend school at the institution for the deaf and dumb or the institution for the blind, so far as the same are properly enforceable. Truant officers shall, within sixty days after the passage of this act, and annually between the first day of July and the first day of August, report to the probate judge of their respective counties the names, ages and residence of all such children between the ages of eight and eighteen years, with the names and postoffice address of their parents, guardians or the persons in charge of them; also a statement whether the parents, guardians or person in charge of each child is able to educate and is educating the child, or whether the interests of the child will be promoted by sending it to one of the state institutions mentioned. Upon information thus or otherwise obtained, the probate judge may fix a time when he will hear the question whether any such child shall be required to be sent for instruction to one of the state institutions mentioned, and he shall thereupon issue a warrant to the proper truant officer or some other suitable person, to bring the child before such judge at his office at the time fixed for the hearing; and shall also issue an order on the parents, guardian or person in charge of the child to appear before him at such hearing, a copy of which order, in writing, shall be served personally on the proper person by the truant officer or other person ordered to bring the child before the judge. If, on the hearing, the probate judge is satisfied that the child is

not being properly educated at home, and will be benefited by attendance at one of the state institutions mentioned, and is a suitable person to receive instruction therein, he may send or commit such child to such institution. The cost of such hearing, and the transportation of the child to such institution shall be paid by the county after the manner provided, where a child is committed to a state reformatory under section 4022-8 (§ 232) of the Revised Statutes of Ohio; provided nothing in this section contained shall be construed to require the trustees of either of the state institutions mentioned, to receive any child not a suitable subject to be received and instructed therein, under the laws, rules and regulations governing such institutions. (95 v. 620; 90 v. 289; 86 v. 337, § 8.)

§ 235. [Penalties; jurisdiction; violations by corporations; disposition of fines collected; employment of attorney; compensation.] (§ 4022-11.) Any officer, principal, teacher or other person mentioned in this act, neglecting to perform any duty imposed upon him by this act, shall be fined not less than twenty-five dollars nor more than fifty dollars for each offense. Any officer or agent of any corporation violating any provision of this act, who participates or acquiesces in or is cognizant of such violation, shall be fined not less than twenty-five dollars nor more than fifty dollars. Any person who violates any provision of this act for which a penalty is not elsewhere provided, shall be fined not more than fifty dollars. Mayors, justices of the peace, police judges, and probate judges shall have jurisdiction to try the offenses described in this act, and their judgment shall be final. When complaint is made, information filed, or indictment found against any corporation for violating this act, summons shall be served, appearance made, or plea entered, as provided in section 7231, Revised Statutes of Ohio, except that in complaints before magistrates, service shall be made by the constable. In all other cases process shall be served and proceedings had, as in cases of misdemeanor. In every case of complaint against a child involving commitment to any children's home or juvenile reformatory, the board of county visitors shall be notified and must attend and protect the interest of the child on the hearing, as provided in section 633-18 of the Revised Statutes of Ohio; and the order of commitment of the child to a state

reformatory must show that the county visitors were so notified and attended the hearing. All fines collected under the provisions of this act shall be paid into the hands of the school district in which the offense was committed. Boards of education are authorized to employ legal counsel to prosecute any case arising under the provisions of this act when it shall deem the same necessary, and the services of such counsel shall be paid for from the contingent fund of the district. (95 v. 621; 90 v. 290; 86 v. 338, §§ 11, 12, 13; 87 v. 326, 145.)

§ 236. [**Repeated violations.**] (§ 4022-12.) Every person who, after being once convicted for violating any of the provisions of this act, shall be convicted of again violating any of the provisions of this act, may, in addition to the punishment by way of a fine elsewhere provided for, be imprisoned not less than ten days nor more than thirty days. On complaint, before a mayor, justice of the peace, or police judge of a second violation of this act involving punishment by imprisonment, if a trial by jury be not waived, a jury shall be chosen and the case tried, after the manner provided in section 3718a, of the Revised Statutes of Ohio. (95 v. 622; 90 v. 290.)

It is held that the above provision applied to the pupils and teachers of parochial schools, such schools being included in the terms private schools. (State v. Quigley, 26 Bull., 126.) If either of the officers mentioned in said section fail to comply with it, they are subject to punishment.

§ 237. [**Sufficient school accommodations to be provided.**] (§ 4022-13.) It is hereby made the duty of every board of education in this state, to provide sufficient accommodations in the public schools for all children in their district compelled to attend the public schools under the provisions of this act. Authority to levy the tax and raise the money necessary for such purpose is hereby given the proper officers charged with such duty under the law. (95 v. 622; 90 v. 291.)

§ 238. [**Costs in prosecution under this act.**] (§ 4022-14.) No person or officer instituting proceedings under this act shall be required to advance, or give security for costs; and if a defendant is acquitted or discharged, or if convicted and

committed to jail in default of payment of fine and costs, the justice, mayor, police judge or probate judge, before whom such case was brought shall certify such costs to the county auditor, who shall examine and, if necessary, correct the account, and issue his warrant to the county treasurer in favor of the respective persons to whom such costs are due for the amount due to each. (95 v. 622; 90 v. 291.)

Sec. 4023. Repealed April 15, 1889.

Sec. 4024. Repealed April 15, 1889.

Sec. 4025. Repealed May 12, 1902.

§ 239. [**Free school books.**] (§ 4026.) That each board of education may furnish the necessary school books free of charge, to enable the parent or guardian, without expense therefor, to comply with the requirements of this chapter, the same to be paid for out of the contingent fund at the disposal of the board; and such levy each year, in addition if necessary to that otherwise authorized by law, is hereby authorized, as shall be necessary to furnish such school books free of charge to all the pupils attending the public schools; but such pupils as are already wholly or in part supplied with necessary school books shall be supplied free of charge only as other or new books are needed; and all school books furnished as herein provided, shall be considered and be the property of the district and loaned to the pupils on such terms and conditions as such board may prescribe. (91 v. 260; 87 v. 317; 74 v. 57, § 4.)

Sec. 4027. Repealed May 12, 1902.

Sec. 4028. Repealed April 15, 1889.

Sec. 4029. Repealed May 12, 1902.

The above section is constitutional. It does not violate article 14, section 1 of the Amendments to the Constitution of the United States, or article 6, section 2, of the Constitution of Ohio. (Mooney v. Bell, 8 N. P., 658, 11 Dec., 786. It is not a diversion of public funds, yet a benefit of a part of the taxpayers, nor does it discriminate against persons who prefer to send their children to schools other than those provided by the state or against persons who have no children. In this case it is said that there is no legal obligation resting on parents or guardians to buy school books, and that there is no difference in principle between the furnishing by the school board, of a black board or chart, and the furnishing of books, these books to remain the property of the district and to be

given out to the pupils on such terms and conditions as the board of education may prescribe, see section 4029-9 (§ 233), as to relief furnished to enable child to attend school. The school board would not have such power in the absence of a statute authorizing the same. (Board of Education v. Detroit (Mich.), 45 N. W. Rep., 585.)

§ 240. [Examination for entering high school.] (§ 4029-1.)

Each board of county school examiners shall hold examinations of pupils of townships, special and joint sub-districts in the subjects of orthography, reading, writing, arithmetic, English grammar and composition, geography, history of the United States including civil government, and physiology.

[Number of examinations; when and where.] Two such examinations shall be held annually, one on the third Saturday in April, and one on the second Saturday in May, at such place or places as the county board of examiners may designate.

[Preparation of questions.] The questions for all such examinations, throughout the state, shall be uniform and be prepared under the direction of the state commissioner of common schools, and sample lists shall be mailed, under seal, to the clerks of the said boards of examiners not less than ten days before each examination. Upon receipt of said lists, the said boards are authorized and required to have a sufficient number of copies of the same printed for use at the examination. Only such applicants as receive an average grade of seventy per cent., with no grade less than fifty per cent. in any branch shall be passed.

[Township commencement.] It shall be the duty of the township boards of education upon written notice, filed by a successful applicant, with the clerk of the board of education, to provide for holding a township commencement not later than the month of June, at some place within the civil township, and to appoint some suitable person to have charge of the same. At this commencement each successful applicant residing in the township school district or any special or joint sub-district having its school house located within the civil township of which the township district forms a part, shall be required to deliver an oration or declamation, or read an essay; thereupon said board of education shall issue a cer-

tificate to each successful applicant, stating that said applicant has taken part in said commencement.

[**County commencement; diploma.**] The board of county school examiners shall provide for the holding of a county commencement not later than August fifteenth, at such place as it may determine. At this commencement there shall be delivered an annual address, at the conclusion of which a diploma shall be presented to each successful applicant who has complied with the provisions of this act; said diploma shall entitle the holder thereof to enter any high school in the state. (89 v. 123, §§ 1, 2; 91 v. 67; 92 v. 198; 94 v. 175, § 4029-1; 95 v. 71, 95 v. 218.)

See Appendix for questions, etc.

§ 241. [**Compensation of examiners and contingent expenses.**] (§ 4029-2.) The compensation of county examiners shall be the same as that fixed in section 4075 (§ 296) of the Revised Statutes of Ohio for the examination of teachers, and each member of the said board of examiners shall be allowed the minimum fee provided for holding examinations for teachers as remuneration for his services incident to the county commencement, and such compensation and the necessary expenses incident to the examination and county commencement shall be paid out of the county treasury as provided in said section 4075 (§ 296); no other compensation shall be allowed county examiners for holding the county commencement. The expenses incident to the township commencement shall be paid by the township board of education from the contingent fund of the township district, and when the pupils of special districts take part in such commencements the boards of education of such districts shall pay, from their contingent funds, to the township board of education their share of such expenses, such share to be based on the proportion of pupils, from each district, taking part in such commencements; a proportional share for pupils from joint sub-districts, taking part in such commencements, shall be paid from the contingent fund of said joint sub-districts. (89 v. 123, § 4; 91 v. 67; 92 v. 198; 95 v. 72; § 4029-2; 95 v. 218.)

§ 242. [**Tuition.**] (§ 4029-3.) The tuition of pupils holding diplomas and residing in township, special, or joint sub-

districts, in which no high school is maintained, shall be paid by the board of education of the district in which they have legal school residence, such tuition to be computed by the month and an attendance any part of the month shall create a liability for the entire month; but a board of education maintaining a high school shall charge no more tuition than it charges for other non-resident pupils, and no board of education shall be required to pay the tuition of any pupil for more than four school years; provided the board of education shall be required to pay the tuition of all successful applicants, who have complied with the provisions of this act, residing more than three miles from the high school provided by said board, when said applicants attend a nearer high school. The tuition of pupils residing in joint sub-districts shall be paid by the boards of education, having control of such districts, from the contingent funds of said districts. A board of education not maintaining a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils and when such agreement is entered into the board making the same shall be exempt from the payment of tuition at other high schools; provided the school or schools selected are located in the same civil township, or some adjoining township, as that of the board making the agreement. Where no such agreement is entered into the school to be attended can be selected by the pupil holding a diploma; provided, due notice in writing, is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, said notice to be filed not less than five days previous to said beginning of attendance. Said tuition can be paid from either the tuition or contingent funds, and in case the board of education deems it necessary it may levy a tax of not to exceed two mills on each dollar of taxable property in the district or joint sub-district in excess of that allowed by section 3959 (§ 62) of the Revised Statutes of Ohio; the proceeds of said levy shall be kept in a separate fund and applied only to the payment of such tuition. (89 v. 123, § 3; 95 v. 72; § 4029-3; 95 v. 218.)

Eligibility and Tuition of Pupil.

Form of Notice.
How Payment Compelled.

ELIGIBILITY AND TUITION OF PUPIL.—If the pupil has a diploma acquired by virtue of section 4029-1 (§ 240) then he is entitled to enter any high school in the state. This would seem to allow the pupil to make a selection of what high school he would enter, unless such power is limited in the above section. As to what will constitute a high school the same is now defined by the legislature, see section 4029-4 (§ 243). While the above section does not limit the high school where the pupil may enter by virtue of his diploma, yet it does limit the instances in which he can enter such high school, and have his tuition paid by the school district in which he has legal residence.

If such school district has no high school, then the school district is obliged to pay his tuition, but no board of education shall be required to pay tuition for more than four years. If the board of education makes arrangements with the board controlling the high school, then the pupil must attend that school if he wishes to have his tuition paid. If, however, the high school is situated more than three miles from the residence of the pupil, then the pupil might exercise his choice, and attend a nearer school, and the school district would be required to pay his tuition. If no arrangements have been made for the pupil to attend any high school, he exercises his choice; the only requirement being, that he give notice in writing to the clerk of the board of education. This notice must contain the name of the school which he expects to attend and when his attendance will begin, and it must be filed five days previous to his beginning such attendance. This notice might be in the following form:

Form of Notice.

To , Clerk of the Board of Education of School District:

Sir:—I hereby give notice that I expect to attend the high school located at, and that I will begin my attendance there on the day of

.....

HOW PAYMENT COMPELLED.—*Mandamus* is not the proper procedure to compel payment until the amount to be paid for has become liquidated either by agreement between the boards of education or by a suit at law. (State v. Board of Education, 8 N. P., 207, 11 Dec., 289.) A father by virtue of his natural guardianship over his children, charged with their education, has such interest in the subject-matter as will entitle him to bring an action compelling payment of such tuition. Where an action is brought by the district maintaining a high school, to recover tuition, it is not necessary that the parent be a party to such a suit. (New Madison, etc., v. Harrison, 14 Dec., 62.)

The statute is now mandatory and if a person holding the diploma brings himself within its provision, the board of education of the district in which he resides is bound to pay his tuition.

§ 243. [**What shall constitute a high school.**] (§ 4029-4.) No board of education shall be entitled to collect tuition under this act unless said board shall be maintaining a regularly organized high school with a course of study extending over not less than two years and consisting mainly of branches higher than those in which the pupil is examined. Should the question arise as to the standing or grade of any particular high school, the state commissioner of common schools is hereby authorized to determine the grade of such school and his finding in the case shall be final. (95 v. 73, § 4029-4; 95 v. 218.)

See § 187 (§4007-2).

CHAPTER 10.

ENUMERATION, TREASURER AND CLERK.

SECTION.		SECTION.	
§ 244 (4030)	Yearly enumeration of school youth.	§ 261	Question submitted to voters.
§ 245 (4031)	Appointment of enumerators; oath and duties.	§ 262	Ballots for.
§ 246 (4032)	Enumeration in two or more counties.	§ 263	Result of election.
§ 247 (4033)	Repealed.	§ 264 (4044)	Annual settlement by treasurer with county auditor.
§ 248 (4034)	Repealed.	§ 265 (4045)	Penalty for failure to make such settlement.
§ 249 (4035)	Clerk to transmit abstract of enumeration to county auditor.	§ 266	Embezzlement of public money.
§ 250 (4036)	When clerk fails, auditor to act.	(4046)	Repealed.
§ 251 (4037)	When county line divides original surveyed township.	§ 267 (4047)	When treasurer may receive or pay money.
§ 252 (4038)	When enumeration not taken, district not entitled to school funds.	(4947a)	Repealed.
§ 253 (4339)	Auditor to furnish abstract to state commissioner.	§ 268 (4048)	Maximum amount of funds which treasurer may hold.
§ 254 (4040)	Duty of state commissioner when enumeration excessive.	§ 269 (4049)	Treasurer to deliver money, etc., to successor.
§ 255 (4041)	Penalty for making fraudulent returns.	§ 270 (4050)	Bond of clerk.
§ 256 (4042)	Treasurer of school funds.	§ 271 (4051)	When orders of clerk for teachers' pay illegal.
§ 257 (4043)	Bond of treasurer; additional sureties on new bond.	§ 272 (4052)	Annual statistical report of board of education; by whom prepared.
§ 258 (5841)	Release of security.	§ 273 (4053)	Publication of receipts and disbursements by clerk.
§ 259 (5842)	New bond.	§ 274 (4054)	Clerk to deliver books, etc., to successor.
§ 260	Provisions for discharge; treasurer, etc.	§ 275 (4055)	How treasurer and clerk to keep accounts.
		§ 276 (4056)	Compensation of treasurer and clerk.

ENUMERATION.

§ 244. [Yearly enumeration of school youth.] (§ 4030.)
There shall be taken in each district, annually, during the

two weeks ending on the fourth Saturday of May, an enumeration of all unmarried youth, noting sex, between six and twenty-one years of age, resident within the district, and not temporarily there, designating also the number between six and eight years of age, the number between eight and fourteen years of age, the number between fourteen and sixteen years of age, the number between sixteen and twenty-one years of age, and the number residing in the Western Reserve, the Virginia Military district, the United States Military district, and in any original surveyed township or fractional township to which belongs section sixteen, or other land in lieu thereof, or any other lands for the use of public schools, or any interest in the proceeds of such lands. (93 v. 312; 87 v. 80; 85 v. 192; Rev. Stat. 1880; 71 v. 15, § 77.)

Enumeration in children's homes; see section 930b, R. S.

At the annual enumeration of school youth as required by the provisions of section 4030 (§ 244), the ages of such youth at the taking of enumeration should be returned and not as of September 1st following. (Atty. Genl.)

The youth enumerated must be actual residents of the district, living with parents or guardians or working to support themselves by their own labor; see section 4013 (§ 201) and notes under same.

§ 245. [Appointment of enumerators; oath and duties.] (§ 4031.) The board of education of each school district, shall, on or before the second Saturday in May, appoint one or more persons to take the enumeration provided for in section *four hundred and thirty* (§244) of the Revised Statutes of Ohio. Each person appointed to take such enumeration shall take an oath or affirmation to take the same accurately and truly to the best of his skill and ability. When making return thereof to the clerk of the board of education, he shall accompany the same with a list of the names of all the youth enumerated, noting the age of each, and with his affidavit duly certified that he has taken and returned the enumeration accurately and truly to the best of his knowledge and belief, and that such list contains the names of all such youth so enumerated and none others. The clerk of the board of education or any officer authorized to administer oaths, may administer such oath or affirmation, take and certify such affidavit, and the

clerk shall keep in his office for the period of five years such report and the list of names, and each person so taking and returning the enumeration shall be allowed by the proper board of education reasonable compensation for his services. (97 v. 365.)

Forms are generally supplied for making out enumeration of youth which contains copies of oaths and general directions for making a proper enumeration. It will be observed that the clerk of the board of education or any other proper officer who is authorized to administer an oath may administer the oath to the person taking the enumeration. It should further be observed that the clerk shall keep the enumeration in his office for five years and that the compensation to the person taking the enumeration is fixed by the board of education. The enumerator must be appointed on or before the second Saturday in May. The penalty attached for not taking enumeration is a deprivation of the share of the school funds. See section 4038 (§ 252).

§ 246. [Enumeration in districts in two or more counties.] (§ 4032.) When a school district including territory attached for school purposes, is situated in two or more counties, it shall be the duty of the person or persons taking such enumeration to report the number of youth as provided in section *forty hundred and thirty* (§ 244) of the Revised Statutes of Ohio, residing in each county and the clerk of the board shall make returns to the auditors of the respective counties in which such youth reside as provided in section *forty hundred and thirty-five* (§ 249) of the Revised Statutes of Ohio. (97 v. 366.)

§ 247. (§ 4033.) Repealed. (90 v. 76.)

§ 248. (§ 4034.) Repealed April 25, 1904.

§ 249. [Clerk to transmit abstract of enumeration to county auditor.] (§ 4035.) The clerk of each board shall, annually, on or before the first Saturday in July make, and transmit to the county auditor, an abstract of the enumeration by this chapter required to be returned by him, according to the form prescribed by the commissioner of common schools, with an oath or affirmation endorsed thereon that it is a correct abstract of the returns made to him under oath or affirmation; and the

oath or affirmation of the clerk may be administered and certified by any member of the board of education, or by the county auditor. (97 v. 366.)

§ 250. [When the clerk fails, auditor to act.] (§ 4036.) If the clerk of any district fail to transmit such abstract of enumeration on or before the first Saturday in July, the auditor shall at once demand the same from such clerk; and in case the enumeration has not been taken as required by this chapter, or the abstract required be not furnished without delay, the auditor shall employ competent persons to take such enumeration, who shall be subject to the legal requirements already specified, except that the return shall be made directly to the auditor, who may administer to each person employed the oath or affirmation required; and the auditor shall allow the person employed by him, a reasonable compensation, to be paid out of the general county fund, and shall proceed to recover the amount so paid in civil action before any court having competent jurisdiction, in the name of the state, against such clerk on his bond, and the amount so collected shall be paid into the school funds of the district. (97 v. 366.)

The returns should now be made on or before the first Saturday in June, as the time of taking the enumeration was changed from July to May without changing the time fixed for making returns.

§ 251. [When county line divides original surveyed township.] (§ 4037.) If parts of an original surveyed township or fractional township are situate in two counties, the auditor of the county in which the smallest part is situate shall, so soon as the abstracts of enumeration are received by him from the clerks of the boards of education, certify to the auditor of the county in which the largest part is situate the enumeration of youth residing in the part of the township situate in his county; if parts of such township or fractional township are situate in more than two counties, like certificates of enumeration shall be transmitted to the auditor of the county containing the greatest relative portion of such township, by the auditors of other counties containing portions thereof; when it is uncertain which county contains the greatest relative portion of such township, such certificates shall be trans-

mitted to the auditor of the oldest county, by the other auditor or auditors; and if the land granted by congress to such township or fractional township for the support of public schools has been sold, the auditor to whom such certificates are transmitted shall notify the auditor of state, without delay, that such enumeration has been certified to him. (70 v. 195, §§ 121, 130.)

This section has nothing whatever to do with the enumeration returned by county auditors to the state commissioner of common schools.

§ 252. [When enumeration not taken, district not entitled to school funds.] (§ 4038.) If an enumeration of the youth of a district be not taken and returned in any year, such district shall not be entitled to receive any portion of the school funds distributable in that year on the basis of enumeration; and if such loss to a district occur through the failure of the clerk of the board of education of a district to perform the duty required of him under section *forty hundred and thirty-five* of the Revised Statutes of Ohio, he shall be liable to the district for the loss, which may be recovered in an action in the name of the state; and the money so recovered shall be paid into the county treasury, and apportioned in the same manner as the school funds so lost would have been apportioned. (97 v. 366.)

§ 253. [Auditor to furnish abstract to state commissioner.] (§ 4039.) The auditor of each county shall make and transmit to the state commissioner of common schools, on or before the third Saturday in July in each year, on blanks to be furnished by the commissioner, an abstract of the enumeration returns made to him, duly certified. (97 v. 366.)

§ 254. [Duty of state commissioner when enumeration excessive, etc.] (§ 4040.) When the state commissioner of common schools on examination of the enumeration returns of any district, is of opinion that the enumeration is excessive in number, or in any other way incorrect, he may require the same to be retaken and returned, and if he think it necessary he may for this purpose appoint persons to perform the service, who shall take the same oath, perform the same duties, and re-

ceive the same compensation, out of the same funds, as the person or persons who took the enumeration in the first instance, and the school fund distributable in proportion to enumeration shall be distributed upon the corrected returns. (70 v. 195, § 75.)

§ 255. [Penalty for making fraudulent returns.] (§ 4041.) An officer through whose hands the enumeration required by this chapter to be returned passes, who, by percentage or otherwise, adds to or takes from the number actually enumerated, shall be deemed guilty of a misdemeanor, and, upon conviction of such offense, shall be fined in any sum not less than five nor more than one thousand dollars, or imprisoned in the county jail not less than ten nor more than thirty days, at the discretion of the court. (70 v. 175, § 75.)

TREASURER AND CLERK.

§ 256. [Treasurer of school funds.] (§ 4042.) In each city, village and township school district, the treasurer of the city, village and township funds, shall be respectively the treasurer of the school funds; in each special district the board of education shall choose its own treasurer, whose term of office shall be for one year beginning on the first day of September. (97 v. 367.)

COMMENTS.—While the treasurer of the city, village or township funds may also be by virtue of the above section the treasurer of the school fund of such city, village and township, yet he holds the school fund in an entirely different capacity, and is liable to the school board for any default in conditions of his bond. Such moneys are now deposited in banks. See section 4968 (§ 69). To deposit money in an unauthorized manner is a breach of his bond. (Board of Eshelby, 6 N. P., 117, 9 Dec., 214.)

The board of education has its choice of two forms of action. It may sue for money received and not accounted for as well as an action on the bond. (Board of Education v. Milligan, 51 O. S., 115.) The same person can not be president of the board and treasurer. (Mitchel v. Schultz, 5 Bull., 502.)

§ 257. [Bond of treasurer; additional sureties or new bond.] (§ 4043.) Each school district treasurer shall, before entering upon the duties of his office, execute a bond, with sufficient

sureties, in an amount at least equal to the amount of school funds that may come into his hands, payable to the state of Ohio, to be approved by the board of education, conditioned for the faithful disbursement, according to law, of all funds which come into his hands; and he may at any time thereafter be required to give additional sureties on his accepted bond, or to execute a new bond with sufficient sureties to the approval of the board of education whenever the said board of education deem it necessary, and if said treasurer shall fail for ten days after service of notice in writing of such requisition, to give bond or additional sureties as aforesaid as required by said board, the office shall be considered and declared vacant and shall be filed [filled] as in other cases. Every bond when so executed and approved shall be filed with the clerk of the board of education of the district, and recorded, who shall cause a certified copy thereof or the names of additional sureties, to be filed with the county auditor without delay, and such board at the time of the approval of any bond or sureties, shall require the treasurer of the school funds to produce all money, bonds or other securities in his hands as such treasurer, and the same shall be then counted by the board or a committee thereof, in the presence of the clerk of the board, who shall thereupon enter upon the records of the board, a certificate, setting forth the exact amount of money or securities so found in the hands of such treasurer, which record shall be signed by the president and clerk of the board and shall be *prima facie* evidence that the amount therein stated was actually in the treasury at that date. (97 v. 334.)

Liability on Bond.

Interest on Funds.

Ex officio Treasurer.

His Own Successor.

Trustees can not Release Bond.

Failure to Give Bond Creates Vacancy.

Treasurer can not be Member of Board.

Form of Bond.

Form of Oath.

Form of Certificate of Bond. Report of School Funds in

Treasury.

LIABILITY ON.—The sureties on the bond of a school official are not liable for money received by their principal not *colore officii*, but by virtue of a rule adopted by the board of education without authority and contrary to law; nor does the failure of such official to order the person who paid him the

money to pay it to the officer entitled to receive it, constitute a breach of his official bond such as will render his sureties thereon liable, when the loss was caused not by such failure, but by reason of their principal unlawfully appropriating the money to his own use after it had improperly come into his hands, together with the confusion created by the unlawful rule referred to. (*State v. Cottle*, 16 Cir. D., 238.)

INTEREST ON FUNDS.—The treasurer of a school district who, under favor of the proviso of R. S. section 6841, deposits its funds in a bank, which allows interest on the average balance of the deposit is required to account to the school district for such interest. (*Eshelby v. Board of Education*, 66 O. S., 71.)

TREASURER EX OFFICIO.—This bond is required even where the treasurer of the school funds is such by virtue of holding some other office, and even when he has already given bond as such officer he must still give *bond* as *custodian* of such school moneys. It is necessary that the clerk certify to the auditor the fact that such bond has been filed and approved; for in the absence of such knowledge the auditor is forbidden to issue a warrant on the county treasurer for any money. (See section 1047, R. S.) In fact, he never is treasurer until he does give the bond, this being a condition precedent to his legal occupancy of the position. It must not only be given but *must be approved*. (*The State v. Commissioners*, 31 O. S., 455.) If a sufficient bond is tendered within a reasonable time, it must be accepted, and on failure or refusal so to do, *mandamus* will lie.

The word “funds” in a school district treasurer’s bond was held to include the drafts and certificates of deposit which, when received, would have been paid on presentation, and which were received as cash by such treasurer. (*Reed v. Board of Education*, 39 O. S., 635.)

TREASURER HIS OWN SUCCESSOR.—Bonds are always strictly construed and in favor of the surety; and it is held, perhaps without exception, that where the term expires, the further liability of the surety ceases. If the bond specifically stated that it was to be for that term as well as all future terms to which the principal obligor might be elected or appointed, a surety might perhaps be held for a future term. But as a rule it may be said that in all cases, whether the prospective official is a new or old incumbent, he must give bond for each term he holds the official position. (See *State v. Corey*, 4 Western L. Monthly; see *State v. Corey*, 16 O. S., 17.)

TOWNSHIP TRUSTEES CAN NOT RELEASE BOND.—The trustees of the township have no right to control the school fund, no right to interfere or meddle with the treasurer’s bond, given

to secure it, except to approve the sureties. The right to sue it is vested in the township clerk, and with this right the trustees can not interfere. A discharge my them of the bond, or of any demand which it was intended to secure is a perfect nullity, because the power has not been granted them expressly and can not be taken by implication, as indicental to any expressly granted power. (Monroe Tp. v. Williams, 13 O., 504.)

FAILURE TO GIVE BOND CREATES VACANCY.—It will be observed that if the treasurer fails to give bond within ten days after he has been notified to give a bond or give additional security, that then his office becomes vacant (see section 1740, Revised Statutes). As to the method to be purued by sureties on such bond to be executed therefrom, a general provision of the Revised Statutes is applicable thereto, which will be given following the suggestions and forms of this section.

TREASURER CAN NOT BE MEMBER OF BOARD.—The relations between the board of education and the treasurer are such that one can not be a member of the board and at the same time act as its treasurer. In passing upon the sufficiency of the treasurer's bond, if he be a member of the board, his own vote may determine the action of the board in reference to said bond.

Form of Township Treasurer's Bond.

Know All Men by These Presents:

That we,, are held and firmly bound unto the state of Ohio, in the sum of dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this day of, A. D. nineteen hundred and

Whereas, the said has been duly elected and qualified as treasurer of township, county, and state of Ohio, for the term of year.. from the day of April, A. D. 190., and until his successor is elected and qualified, and is therefore *ex officio* treasurer of the board of education of the township district of said township.

Now, the condition of the above obligation is such, that if the said shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation shall be void; otherwise it shall be and remain in full force.

.....
.....
.....

The above bond approved by said board this day of, A. D. 190..

(Date.)

.....
.....

President of said Board.
Clerk of said Board.

Oath of Treasurer.

The State of Ohio, County, Township, ss.:

Before me,, clerk of said township, personally came, who being duly sworn according to law, says that he will support the Constitution of the United States and the Constitution of the state of Ohio; and that he will faithfully discharge his duties as treasurer of the board of education of the township district of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on day of, A. D. 190..

.....,
Township Clerk.

Form of Certificate of Treasurer's Bond.

....., 190..

To the Auditor of County:

It is hereby certified that has executed and filed with me a bond for the faithful disbursement, as treasurer of township, county, of all school funds that may come into his hands as such treasurer; which bond, dated April, 190.., is in the penalty of dollars, and has been approved by the board of education of said township.

.....,
Clerk of said Township.

NOTE.—The above can be altered so as to apply to the bond of the treasurer of a separate school district.

Form of Report and Certificate of School Funds in Treasury.

We hereby certify that, by a count, as required by law, of all the money, bonds and securities in the hands of, treasurer of township (or district), county, Ohio, made this day of, 190.., in the presence of the clerk of the board, we find dollars (and bonds, etc., in value amounting to dollars) school funds to be in the treasury on the date above named, and we have directed the clerk to enter upon the records of the board a copy of this report.

(Signed.)

Attest:

.....,

President.

.....,

Clerk.

.....,

.....,

.....,

Board (or Committee.)

§ 258. [Release of surety.] (§ 5841.) A surety of the treasurer of school funds, in any school district organized under the provisions of law, may at any time notify the board of education of the proper district, by giving at least five days' notice, in writing, that he is unwilling to continue as surety for such treasurer, and will, at a time therein named, make ap-

plication to the board of education to be released from further liability upon his bond; and he shall also give at least three days' notice, in writing, to such treasurer of the time and place at which the application will be made. (70 v. 195, § 48.)

This section gives a mode for a surety to be relieved from further liability on the bond of the treasurer and the following forms may be used to each:

Form of Notice of Surety to be Relieved from Bond.

To the Trustees of Township, County, Ohio:

You are hereby notified that I am unwilling to longer continue as surety on the official bond of (here designate office, etc.), and that I shall, on the day of, 190., at o'clock A. M., at the township clerk's office, make application to your trustees of said township to be released from all further liability upon the bond of the said

(Date.)

.....

Form of Notice to Official.

To, of Township, County, Ohio:

Sir:—You are hereby notified that on the day of, 190., at the township clerk's office, at o'clock A. M., I shall make application to the township trustees to be released from all further liability on your bond as of township.

(Date.)

.....

§ 259. [New bond.] (§ 5842.) The board of education, upon such notice being given, shall hear the application, and if, in their opinion, there is good reason therefor, shall require the treasurer to give a new bond, conditioned according to law, and to the satisfaction of the board, within such time as they may direct; and if the treasurer fail to execute such bond, the office shall be deemed to be vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor; and the cost of such application shall be paid by the person making the same. (70 v. 195, § 8.)

After the proper notices have been given, the board of education shall hear the application and it seems to be left in their discretion whether they will make an order releasing the surety, and it might be said, that while the statute requires that there should be reason, aside from the fact that suretyship is a burdensome matter and one without remuneration to the surety, the order is generally made upon the asking of the

surety, and the board of education should make the following entry.

Form of Entry.

This day this matter came on to be heard upon the application of C. D. and E. F. to be released and discharged as sureties upon the bond of A. B., and the same was submitted to the board. Whereupon the board finds that there is good reason therefor, and it is ordered that the treasurer give a new bond conditioned according to law, in the sum of \$. and to the satisfaction of this board within days from this date and upon the execution of said bond the sureties shall be relieved from all future liability, but they shall not be released of liabilities now existing or in any manner discharged until such new bond is filed and accepted by this body.

Form of bond may be very much similar to that given in the preceding section.

§ 260. [Provisions for release and discharge of county, city, village, township or school district treasurers and their sureties in certain cases.] Sec. 1. When without fault or negligence of the officer intrusted by law with the care of the same, a loss of public funds intrusted to a county, city, village, township or school treasurer, by virtue of his office, is caused by fire, robbery, burglary or inability on the part of the bank to refund public money lawfully in its possession belonging to such public funds; the county commissioner, in case of such loss by a county treasurer, and the city or village council, township trustees and boards of education, in like cases of loss by city, village, township and school treasurers, respectively, are hereby authorized and empowered, to release and discharge such treasurer and the sureties upon his official bond from all liability to or demands of the county, city, village, township or school district interested, for such loss so created and arising; provided that before such release and discharge shall be affected such board of county commissioners, city or village council, township trustees or board of education, effecting such release and discharge, shall find; that such loss of public funds was not occasioned by the fault or negligence of such treasurer, and shall cause an entry of such finding to be made upon the record book of the proceedings of the council or board; provided further that in cases of loss by county treasurers, the county commissioners, and in cases of loss by city or village treasurers, the city or village council, and in cases of loss by township treasurers, the township trustees, and in

cases of loss by school treasurers, the board of education of the school treasurers, the board of education of the school district; having first made and caused to be entered the finding of no fault or negligence as above provided, may and they are hereby authorized, at the next ensuing general election to be held in such county, city, village, township or school district, respectively, to submit to the qualified electors of said county, city, village, township or school district interested the question of discharging such treasurer and the sureties upon his official bond from liability on account of such loss of funds.

[**Petition of electors.**] Provided further, that whenever twenty-five per cent. of the qualified electors of such county, in cases of county treasurers, or a like percentage of qualified electors in cases of city, village, township or school treasurers, shall petition the council or board for the privilege to determine by ballot whether any treasurer and the sureties on his official bond shall be released and discharged, such council or board shall, and they are hereby required to, submit such question to the qualified electors of said county, city, village, township or school district interested, as herein provided. Provided that any taxpayer of the county, township, municipality or school district affected may within five days after any finding of release or discharge provided for in this act is made, take an appeal therefrom to the common pleas court of the county, and until such appeal is finally determined such finding and other proceedings shall not affect such release and discharge. Notice in writing of such intention to appeal shall be filed with the clerk or auditor of the board or council making such finding within five days thereafter, and a transcript of the said finding and other proceedings shall within thirty days after said finding be filed in said common pleas court and docketed therein as other cases. Whereupon the court shall proceed to try and determine the question whether such public funds were lost by the fault or negligence of such treasurer; and in case it be found that they were, the finding of the board or council below ordering such discharge shall be vacated; but in case they were not, then such finding shall remain in full force, and the court shall cause its judgment

to be certified to the board or council making such finding. (98 v. 120.)

Purpose and Extent of Statute.	Procedure on Petition Signed by Electors.
Mode of Procedure.	Form of Petition.
Form of Application to Proceed, etc.	Proceeding on Petition of Electors.
Procedure on Filing of Application.	Order of Election.
Form of Entry.	Form of Order of Election.

PURPOSE AND EXTENT OF STATUTE.—Heretofore, when it was sought to relieve a treasurer and his sureties from liability for a loss that had occurred to the treasurer of the funds in his possession, a special act of the legislature was required. In such cases, while it might have been within the power of the legislature to directly relieve the treasurer and his sureties, a general practice was to refer the same back to the people for a vote upon the question, and if the vote was favorable, the treasurer and his sureties were released. This kind of a statute is strictly construed and only such persons can take advantage of it as bring themselves within its provisions, and it will be observed that the first essential in order that the treasurer may be relieved is that the loss has occurred without his fault or negligence, and then it seems to further limit this matter in this, that the loss must be caused by *fire, robbery, burglary* or *inability* on the part of the *bank* to refund money *lawfully* in its possession, and it should be observed further in relation to the relief of the inability of a bank to refund the money, that the money must have been *lawfully* in its possession. “Lawfully” here refers no doubt to the statutes now in force requiring the treasurers to deposit their moneys in certain banks.

MODE OF PROCEDURE.—It will be observed that the boards who have by law control of the funds generally or the disbursement of them, are the bodies which must act first and last in a proceeding to relieve a treasurer and his bondsmen. In a township, this board would either be the township trustees, or in case the funds belong to a board of education, such board of education would be the body to whom the petition or application should first be addressed.

Whether or not this application should have attached to it the petition signed by twenty-five per cent. of the qualified electors of the district, is one which will depend somewhat upon the choice of procedure adopted by the applicant. Probably the better way to pursue, as it seems to be the first

essential required, is for the treasurer or his bondsmen to present an application to the trustees or board of education, as the case may be, asking that such proceedings may be had as is contemplated by the statute. This application should set forth the amount of funds that were lost, and the manner in which the loss occurred, and the capacity in which the funds were held by the treasurer and might be in the following form :

Form of Application to Proceed, etc.

To the Trustees of Township, etc.:

The undersigned respectfully represent that on the day of one A. B. was duly elected as treasurer of township, and thereafter, on the day of, gave bond as required by law, with C. D. and E. F. as sureties thereon, but afterwards, to wit, on the day of, said treasurer having the sum of \$...... in a safe in his office, was robbed of the same (or here insert such other manner or way in which the funds became lost). That such loss occurred without the fault or negligence of the said A. B., and that the undersigned respectfully ask your honorable board to take such measures as may be authorized by law to relieve the said A. B. from liability for such loss, and the said C. D. and E. F. as sureties on his said bond.

(Date.)

.....

PROCEDURE ON FILING OF APPLICATION.—At the first regular meeting of the township trustees or board of education after such application has been filed they should make an examination into these two questions in particular. First, Was the loss without fault or negligence of the treasurer? Second, Was it caused by fire, robbery, burglary or inability of the bank, etc.? And upon these two questions the board should resolve itself into a court of inquiry; for upon these, any taxpayer might have the right to appeal and it would be better to make this inquiry full and complete, in the first instance, than to have it go up on appeal and the entire proceedings set out aside. The board of trustees, or the board of education, after having heard evidence upon this question, should make a journal entry of which the filing might serve as a general form.

Form of Entry.

In the Matter of the Relief of A. B. and C. D. and E. F. on Treasurer's Bond:

This day this matter came on to be heard upon the application of A. B., C. D. and E. F., to be relieved and discharged from the loss resulting to said A. B. as treasurer and and the trustees, having heard all the evidence, do find that such loss occurred as in said application set forth, and that the same was without fault or negligence of the said A. B. or either of said bondsmen.

Wherefore, it is ordered that said applicants proceed and file their petition with this board containing thereon at least twenty-five per cent. of the qualified electors of this township, in order that the same may be submitted to a vote of the people of this township, etc.

PROCEDURE ON PETITION SIGNED BY ELECTORS.—The trustees or board of education having found as above indicated, the next thing would be the presentation of the petition signed by at least twenty-five per cent. of the qualified electors of such township, etc. Of course, if the trustees have not found in favor of the application upon the question submitted to them in the applicant's petition that would end the matter. This petition might be in the following form.

Form of Petition.

To the Trustees of Township:

The undersigned, representing twenty-five per cent. of the qualified electors of township, etc., respectfully petition to your honorable body for the privilege of determining by ballot whether A. B., the treasurer, etc., and C. D. and E. F., sureties on his official bond, should be released and discharged from all loss suffered by said treasurer as provided by law.

PROCEEDING ON PETITION OF ELECTORS.—The first question that will present itself to the township trustees or board of education will be whether or not the petition has been signed by twenty-five per cent. of the qualified electors of such township, so in case of the treasurer of school board of the school district. The matter of determining the number of electors in such township, etc., may not be an easy question and perhaps no general rule can be given. Where the territory is not a large one an actual account may be had, but this is one of some uncertainty. Perhaps as good a way as could be followed would be to take the number of votes that were cast at the last general election and add to this perhaps twenty-five or thirty per cent., and then take twenty-five per cent. of the whole amount. This is a matter of fact which seems to rest within the discretion of the township trustees or school board and there is no appeal from their decision thereon.

ORDER OF ELECTION.—The trustees having found that the petition has the required number of qualified electors, and that the other requirements of the statute have been fulfilled, should put an entry on their journal of such finding and order, which may be in the following form.

Form of Order of Election.

In the Matter of the Relief of A. B. and C. D. and E. F. on Treasurer's Bond:

This day this matter came on further to be heard upon the petition filed herein for the privilege of determining by ballot whether or not

A. B., and C. D. and E. F., as sureties, should be relieved from the loss occurred and as in their application hereinbefore set forth, and the same was submitted on the testimony and said petition.

Whereupon, this board finds that such petition has been signed by twenty-five per cent. of the qualified electors of this township (or, in case of board of education, of its school district). That as this board has heretofore found that such loss was without fault or negligence of the said A. B., wherefore it is ordered that the question as to such discharge shall be submitted at the next general election to the qualified electors of this township (or school district, as the case may be), and that a copy of this journal entry be certified to the board of deputy state supervisors of elections of this county for procedure thereunder by them as required by law.

§ 261. [How question of release submitted to vote; notice, etc.] Sec. 2. The deputy state supervisors of elections of the county interested or within which such city, village, township or school district is located, shall cause notice of the submission of said proposition to the electors; in case of relief of county or city treasurers by publication in two newspapers of opposite politics in said county or city for at least thirty (30) days next prior to the date upon which such election is to be held, and in case of relief of village or township treasurers twenty (20) days' notice of such election shall be given by posting notices thereof in five (5) public places within the village or township; and in cases for the relief of school treasurers, ten (10) days' notice of such election shall be given by posting notices thereof in five (5) public places in the school district interested. (98 v. 120.)

COMMENTS.—The board of deputy state supervisors having received a copy of the journal entry must proceed as provided for in the above section. The particular thing required of them is that notice must be given to the electors of such district, and that such question will be voted upon at the next election. No particular wording is required for this notice, but it must be sufficient to advise the electors of the proposition they are going to vote upon.

§ 262. [Ballots, how printed.] § 991c.) Sec. 3. The ballots for said election shall have printed thereon: "Discharge of treasurer and sureties—yes." "Discharge of treasurer and sureties—no." And shall have a place at the left of each proposition for the voter to mark according to law, the proposition he favors. (98 v. 120.)

§ 263. [Entry of result of election.] Sec. 4. If a majority of the votes cast upon such proposition at such election shall be in favor of the discharge of the said treasurer and his said sureties, the board of county commissioners in cases of county treasurers and the city or village council in cases of city or village treasurers, and the township trustees in cases of township treasurers, and boards of education in cases of school district treasurers, shall cause to be made an entry of the result of the election in the record book of proceedings of the council or board ordering such election and shall thereupon release and discharge said treasurer and his sureties on his official bond from all liability on account of such loss. But if a majority of the votes cast shall be against such discharge then entry of such result of such election shall be made in the record book of proceedings of the council or board ordering such election and no further action therein shall be taken by such council or board. (98 v. 120.)

Procedure After Election.

Appeal.

Entry of Discharge.

PROCEDURE AFTER ELECTION.—After the election has been held, the deputy state supervisors, under whose authority the election was held, should certify to the trustees or the board of education the result of the election, and upon the receipt of such certificate the board should make an entry upon their journal of whatever final action should be taken thereon. If the election has been in favor of the discharge of such treasurer and his sureties, then the trustees or board of education are bound to make an entry in accordance with such vote on their journal, and if they refuse so to do. I have no doubt they could be compelled by an action in *mandamus*. If the vote is to the contrary, an entry to that effect should be placed on the journal. It will be observed that a majority of the votes cast upon such proposition are sufficient to discharge the treasurer and his sureties. It does not require a majority of all the votes of the township or district. This entry of discharge may be in the following form.

Entry of Discharge.

In the Matter of the Relief of A. B. and C. D. and E. F. on Treasurer's Bond:

There having been filed with this board a certificate from the deputy state supervisors of elections of county, that at the general election held on the day of, a majority of the

votes cast upon the proposition to relieve A. B., and C. D. and E. F., his sureties, from the loss that resulted to said A. B., as treasurer of this township, was in favor of the discharge of said A. B. and his said sureties.

Wherefore, it is ordered that said A. B., and C. D. and E. F., his said sureties, shall be, and are hereby released and discharged from all loss and liability that occurred as set forth in his application heretofore filed herein.

APPEAL.—In a previous section (260a) it is provided that any taxpayer within the district involved might, within five days after any finding of release or discharge has been made, take an appeal to the court of common pleas of the county. This appeal is limited to the question whether such public funds were lost by the *fault* or *negligence* of such treasurer only. All other questions seem to be within the final jurisdiction of the trustees or board of education, etc. Whether this appeal should be taken immediately after the finding has been made out, the question as to the fault or negligence of the treasurer, or whether it should be made after the final order has been made, is not so clear, but as the statute provides that proceedings in appeal may be taken “within five days after any finding or release or discharge is made,” and the final finding or entry of discharge can only be made after the question has been voted on. Therefore, it would seem clear that the right to appeal would exist five days after the final entry of discharge has been made.

The statute plainly indicates the procedure that should be taken, and that question having been heard, the court would make its order accordingly.

§ 264. [Annual settlement by treasurer with county auditor.] (§ 4044.) The treasurer shall, annually, within the first ten days of September, settle with the county auditor for the preceding school year, and for that purpose shall make a certified statement showing the amount of money received, from whom, and on what account, and the amount paid out, and for what purpose; he shall produce vouchers for all payments made; if the auditor, on examination, find the statement and vouchers to be correct, he shall give the treasurer a certificate of the fact, which shall, *prima facie*, be a discharge of the treasurer for the money paid; and for making such settlement he shall be entitled to receive the sum of one dollar, and also five cents per mile for traveling to and from the county seat, to be paid out of the county treasury, on the order of the county auditor. When the treasurer's term begins on the first day of September the annual settlement shall be made by the out-

going treasurer. (92 v. 58; 85 v. 192, 194; Rev. Stat. 1880; 71 v. 9, § 47.)

Form of Report of the Treasurer of Township, County, Ohio.

To the County Auditor, for the year ending August 31, 190..:

(To be made to the auditor on or before the 4th day of September.)

RECEIPTS.

Amount of school moneys received during the year from the following sources, viz.:

Balance on hand September 1, 190..	.....	\$.....
State tax .....	.....	.....
Irreducible school funds .....	.....	.....
Interest on rents on school land, section 16.....	.....	.....
Local tax for school and school house purposes.....	.....	.....
Amount received on sale of bonds.....	.....	.....
Fines, licenses, tuition of non-resident pupils, and other miscellaneous sources .....	.....	.....
Total receipts .....	.....	\$.....

Whole amount paid teachers in common schools	{ High..... \$..... }	{ Primary.... \$..... }	Total..... \$.....
--	-----------------------	-------------------------	--------------------

Amount paid for supervision, exclusive of teaching services.. ..

For sites and buildings.....

Amount paid for interest on, or redemption of, bonds.....

For fuel and other contingent expenses.....

Total expenditures

Balance on hand September 1, 190.. ..

Amount of outstanding orders unpaid September 1, 190.....

I certify the foregoing to be in all respects correct.

.....,

Treasurer.

....., Ohio,
....., 190..

“The above report should cover only the moneys *actually* received and disbursed by the treasurer within the school year ending August 31. In case the school funds arising from the second semi-annual distribution of taxes are not received on or before August 31, such funds must be reported by the treasurer among the receipts of the following year. In case there were outstanding orders unpaid on the first of September, the amount of such orders should be added to the report, in order that it may show the entire expenses of the schools within the year, and thus correspond to the returns of the board of education. All claims upon the school fund for expenses incurred within the year should be settled and paid, if possible, previous to August 31.

“By ‘irreducible school funds’ is meant all funds from the state, as interest on the Virginia military, United States mili-

tary, or Western Reserve school funds, and the rent of, or interest on the proceeds of the sale of 'section sixteen.'

"All money paid by non-resident pupils for tuition in any school in the township, must be paid into the township treasury, to be disbursed on the clerk's order, and reported under the head of receipts.

"The county auditor transfers all funds belonging to joint sub-districts directly to the township in which the school is located.

"If it is evident to the county auditor that the school moneys have been illegally paid out, as they would be if paid to any member of a board of education on any contract with such board, or as an employee thereof, it is his duty to refuse the treasurer credit for the same. If moneys have been paid from the wrong fund, as from the school fund, when the law says it must be township fund, the auditor must not allow credit to such orders. He should insist on their correction by the board, or correct them himself by proper debit and credit.

"No voucher should be received by the auditor which he has reason to believe a court of law would reject. No paper is a voucher for the payment of money to A, which has not A's receipt on it, or accompanying it. An order properly made out, but merely marked 'paid' by the treasurer, is not a receipt." See section 4047 (§ 267.)

§ 265. [Penalty for failure to make such settlement.] (§ 4045.) If the treasurer of any school district willfully or negligently fail to make such annual settlement within the time prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the state; which amount, when collected, shall be paid into the county treasury, and shall be applied to the use of common schools in his district; and the county auditor shall proceed forthwith, in case of such failure, to recover the penalty, by suit against such treasurer, before any justice of the peace of his county. (71 v. 9, § 47.)

§ 266. [Embezzlement of public money.] (§ 6841.) Whoever being charged with the collection, receipt, safe-keeping, transfer or disbursement of the public money or bequest, or any part thereof, belonging to the state, or to any county, township, municipal corporation, board of education, cemetery association or company in this state, converts to his own use, or to the use of any other person, body corporate, association or party whatever, in any way whatever, or uses by way of

investment in any kind of security, stock, loan, property, land or merchandise, or in any other manner or form whatever, or loans with or without interest to any company, corporation, association or individual, or, except as hereinafter provided, deposits with any company, corporation or individual any portion of the public money or any other funds, property, bonds, securities, assets or effects of any kind received, controlled or held by him for safe-keeping or in trust for a specific purpose, transfer or disbursement, or in any other way or manner, or for any other purpose, shall be deemed guilty of embezzlement of so much of the money or other property thus converted, used, invested, loaned, deposited or paid out, and shall be imprisoned in the penitentiary not more than twenty-one years nor less than one year, and fined in double the amount of money or other property embezzled, which fine shall operate as a judgment at law on all of the estate of the party sentenced, and be enforced to collection by execution or other process for the use only of the owner of the property or effects so embezzled, and such fine shall only be released or entered as satisfied by the party in interest as aforesaid.

[**Deposit with bank.**] Provided, however, nothing in this act shall be so construed as to make it unlawful for the treasurer of any township, municipal corporation, board of education or cemetery association to deposit any portion of such public money with any person, firm, company or corporation organized and doing a banking business under the banking laws of the state of Ohio, or the banking laws of the United States. Provided, further, the deposit of any such funds in any such bank shall in no wise release any such treasurer from liability for any loss which may occur thereby. (91 v. 338.)

[**Illegal loan will not prevent recovery.**] Sec. 21. The state, any county, township, municipal corporation, or school board, shall not be precluded by the illegal loan or deposit by any officer or agent of public money, funds, property, bonds, securities, or assets, belonging to it, from suing for and recovering the same; and such suit shall not be held to be an adoption or satisfaction of such illegal transaction. (60 v. 64.)

Embezzlement of school funds, penalty; see sections 6841 (§ 266), 6846, R. S.

What is *prima facie* evidence of embezzlement by public officers; see section 7299, R. S.

Township trustees have no authority to release a treasurer from his liability for any portion of the school fund belonging to the township. (*Monroe Township v. Williams*, 13 O., 495.)

In the absence of statute the state would have no right of recovery unless it had ratified an unauthorized loan. *State v. Executor of Butler*, 3 O. S., 309.)

§ 267. [When treasurer may receive or pay money.] (§ 4047.) No treasurer of a school district shall pay out any school money except on an order signed by the president and countersigned by the clerk of the board of education; and no money shall be paid to the treasurer of a district, other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year, immediately preceding such treasurer's settlement with the auditor. (97 v. 367.)

A board of education has capacity to sue its treasurer for money received and not accounted for. The remedy is not limited to an action on the bond, but may be for money had and received. (*Board of Education v. Milligan*, 51 O. S., 115.)

The treasurer should not pay an order for what he believes to be an illegal object, until he can consult with other members of the board, and have the question fully investigated. A man of discretion is supposed to be chosen to this, as to other offices, that the chances for discovering errors and fraud may be multiplied. (Com.)

§ 268. [Maximum amount of funds which treasurer may hold.] (§ 4048.) The clerk of a board of education or the county auditor shall pay no money into the hands of the treasurer of a school district in excess of the amount of his bond, and should said clerk or auditor violate this provision, he and his bondsmen shall be liable for any loss occasioned thereby; and before giving said treasurer any warrant or order for any school funds the auditor may require the treasurer to file with him a statement showing the amount of such funds in his possession, signed by the clerk of the board of education. (97 v. 369.)

§ 269. [Treasurer to deliver money, etc., to successor.] (§ 4049.) At the expiration of his term of service each treas-

urer shall deliver to his successor in office all books, papers, money, and other property in his hands belonging to the district, and take duplicate receipts of his successor therefor, one of which he shall deposit with the clerk of the board of education within three days thereafter. (97 v. 334; 85 v. 192, 194; Rev. Stat. 1880; 71 v. 9, § 47; 97 v. 334.)

CLERK.—Formerly in township school organizations, the township clerk was *ex officio* clerk of board of education. The new school code, however, provides that in all instances the board of education elects its own clerk and it is generally provided that the clerk may be either a member of the board or an outsider. See § 3897 (§ 12) for clerk of city district, and see § 3920 (§ 34) for township district, and § 3933 (§ 48), special districts, and reference is made to these several provisions and the notes thereunder for various matters concerning the clerk, also the following are special provisions giving various duties to the clerk: To certify transfer of territory, section 3893 (§ 8); to give notice of election, section 3909 (§ 29); township not entitled to vote, section 3915 (§ 32); process served on, how, section 3976 (§ 84); absence from meeting, section 3983 (§ 90); record of proceeding, how kept, section 3984 (§ 91); shall draw order for pay of teacher, section 4018 (§ 208); shall prosecute for non-attendance of children, section 4025 (§ 831); must furnish auditor statement of funds in treasurer's hands, etc., section 4048 (§ 268).

Such clerk is a public officer, and as he is elected biennially he serves for two years. *State v. Coon*, 26 C. C., 243.

§ 270. [Bond of clerk.] (§ 4050.) The clerk of each board of education shall execute a bond, in an amount and with surety to be approved by the board, payable to the state of Ohio, conditioned that he shall perform faithfully all the official duties required of him; which bond shall be deposited with the president of the board, and a copy thereof, certified by the president of the board, shall be filed with the county auditor. (70 v. 195, § 45.)

Form of Township Clerk's Bond.

Know All Men by These Presents:

That we,, are held and firmly bound unto the state of Ohio, in the sum of dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this day of, A. D. nineteen hundred and

The condition of the above obligation is such that, whereas, the

said has been duly elected and qualified as clerk of board of education of, township, county, and state of Ohio, for the term of two, from the day of April, A. D. 190.., and until his successor is chosen and qualified, and is therefore clerk of the board of education of the township district of said township.

Now, if the said shall perform faithfully all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it will remain in full force.

The sureties on the above bond, and its amount, approved by said board this day of, A. D. 190..

.....

 President of said Board.

.....
 Clerk of said Board.

Oath of Clerk.

The State of Ohio, County, Township, ss.:

Before me,, clerk of said township, personally came, who being duly sworn according to law, says that he will support the Constitution of the United States and the Constitution of the state of Ohio; and that he will faithfully discharge his duties as clerk of the board of education of the township district of township, county, Ohio, during his term of office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on this day of, A. D. 190..

The clerk can not qualify until he has given a bond. (State v. Cave, 26 C. C., 303.)

Township clerk can administer oaths connected with school affairs. (1505 R. S.)

§ 271. [When orders of clerk for teachers' pay illegal.] (§ 4051.) It shall be unlawful for the clerk of a board to draw an order on the treasurer for the payment of a teacher for services until the teacher files with him such reports as are required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the service, and a statement of the branches taught; but orders may be drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or a foreign language, on presentation of a certificate to the clerk, signed by a majority of the examiners, and the filing with him of a true copy thereof, covering the time for which a special teacher has been employed, and the specialty taught. (70 v. 195, §§ 53, 94.)

COMMENTS.—“If an order is drawn for the illegal payment of a teacher, the remedy of the board is a writ of injunction.

“Each of these three documents must be carefully filed by the clerk and handed over to his successor in office.

“Persons who are to teach subjects not on the list of studies enumerated in the statute, must have a certificate covering all such branches. Not only the teacher, but each member of the board of education, is severally liable for the repayment of money paid under their vote and order, to a teacher who does not hold a certificate covering each and every branch taught.

“An assistant teacher who has not a legal certificate cannot be paid through an order drawn in favor of another teacher, who had a certificate, nor can any uncertificated teacher, who is employed as a substitute, receive pay through another teacher. Section 4074 (§ 295) provides that ‘no person shall be employed as a teacher’ who has not a legal certificate. It is the duty of the township clerk to refuse to draw an order for the payment of money from the school fund when he has satisfactory evidence that any portion of such money is to be used for the payment of a teacher not holding a legal certificate. A legal certificate must cover the entire time of the teacher’s service; must specify all the branches taught, and can neither directly nor indirectly be made to legalize another teacher’s service.

“But the mere fact that teachers under a superintendent are required to teach branches that the superintendent has no certificate for will not deprive the superintendent of his pay. *State v. Moser*, 12 C. C., 249, 4 C. L. C. 557.

“An order drawn by the clerk of the board of education, under the statute, in favor of a third person or bearer, on the township treasurer, is not negotiable, and a purchaser takes such order subject to the same defenses that could be made against it in the hands of the payee. (*The State ex rel. Steinbeck et al. v. Treasurer of Liberty Township*, 22 O. S., 144.)

“The written acceptance of such order by the predecessor of the township treasurer, to whom it was presented for payment, imposes no greater obligation on the latter to pay the same, than he would have been under had it been presented without such acceptance.

“If an order has been illegally issued, the board of education should recall it, and in case of refusal to return, they should enter a suit in equity to recover it or have it canceled.

“The term ‘entire time of service,’ as used in this section, refers to the time of service covered by the order to be drawn, not to the entire time of employment.

“If a school treasurer, indorses an acceptance of an order drawn on him, he is obliged thereby to retain proper funds to

meet it. But this even is not permissible, unless the order itself is unimpeachable." (50 Mo., 425.)

Order on the Treasurer.

(Form prescribed by Bureau of Inspection and Supervision of Public Offices.)

RECEIVED PAYMENT, 190..	No....
	OFFICE OF BOARD OF EDUCATION....SCHOOL DISTRICT.
	\$....., OHIO,, 190..
	THE TREASURER OF SAID SCHOOL DISTRICT
	WILL PAY TO
	..... DOLLARS.
	out of Fund in the Treasury.
	For
	BY ORDER OF THE BOARD OF EDUCATION.
	....., PRESIDENT....., CLERK.

Order on Treasurer When School Funds are in a Depository.

(Form prescribed by Bureau of Inspection and Supervision of Public Offices.)

RECEIVED PAYMENT, 190..	No....
	OFFICE OF BOARD OF EDUCATION....SCHOOL DISTRICT.
	\$....., OHIO,, 190..
	THE TREASURER OF SAID SCHOOL DISTRICT
	WILL PAY TO
	..... DOLLARS.
	out of Fund in the Treasury.
	For
	BY ORDER OF THE BOARD OF EDUCATION.
	....., PRESIDENT....., CLERK.
Payable at Bank, .....Ohio.	
....., TREASURER.	

§ 272. [Annual statistical report of the board of education; by whom prepared.] (§ 4052.) The clerk of each board shall prepare the annual report of the receipts and expenditures of school money, and the statistical statement in reference to the schools, required of the board by section *forty hundred and fifty-seven* (§ 277) of the Revised Statutes of Ohio, and transmit the same to the county auditor on or before the first day of September; provided, that in each school district having a superintendent of schools, the annual report, except the receipts and expenditures of money, shall be made by the superintendent. (Passed and approved April 25, 1904.) 97 v. 368.

Penalty for not making report, see Sec. 4061, 4062 (§§ 281, 282).

The board of education should see that the reports required by this section are filed before allowing compensation to the clerk for his services.

§ 273. [Publication of receipts and disbursements by clerk.] (§ 4053.) The board of education of each district, except city districts, shall require the clerk of the board annually, ten days prior to the election for members of the board of education, to prepare and post at the place or places of holding such elections, or publish in some newspaper of general circulation in the district, an itemized statement of all money received and disbursed by the treasurer of the board within the school year last preceding. (97 v. 368.)

§ 274. [Clerk to deliver books, etc., to successor.] (§ 4054.) Each clerk shall, at the expiration of his term of office, deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school districts, filed by teachers. (70 v. 195, § 84.)

§ 275. [How treasurer and clerk to keep accounts.] (§ 4055.) The auditor of each county shall furnish to the clerk and treasurer of each school district in his county a suitable blank book, made according to the form prescribed by the bureau of inspection and supervision of public offices, in which each shall keep an account of the school funds of his district; the clerk's account shall show the amounts certified

by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn; the treasurer's accounts shall show the amounts received from the county treasurer, all sums received from other sources on the order of the clerk, and the amounts paid out, and from what funds and for what purposes paid; and a separate account of each fund shall be kept, and each account shall be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. (97 v. 368.)

The clerk of the board has no right to receive and become the custodian of tuition funds, even though so directed by the board. (State v. Griffith, 74 O. S., 80.)

§ 276. [Compensation of treasurer and clerk.] (§ 4056.)

The board of education of each school district shall fix the compensation of its clerk and treasurer, which shall be paid from the contingent fund of the district; if the clerk and treasurer are paid annually the order for the payment of their salaries shall not be drawn until said clerk and treasurer shall present to the board of education a certificate from the county auditor stating that all reports required by law have been filed in his office; if the clerk and treasurer are paid semi-annually, quarterly, or monthly, the last payment on their salaries previous to August 31, shall not be made until all reports required by law have been filed with the county auditor and his certificate presented to the board of education as required herein. (77 v. 368.)

The officers of a school board or municipal corporation are not such officers within the meaning of the Constitution, that their salaries cannot be increased or diminished during their term of office; but the change could not be retroactive. (Ferry v. Board of Ed., 21 C. C., 785.)

CHAPTER 11.

REPORTS.

SECTION.		SECTION.	
§ 277 (4057)	Annual report by board of education; its contents.	§ 281 (4061)	Penalties against auditor and clerk.
§ 278 (4058)	In what form to be made, etc.	§ 282 (4062)	When auditor to appoint person to make report.
§ 279 (4059)	Reports by superintendents and teachers.	§ 283 (4063)	Further penalties against auditor.
§ 280 (4060)	Duties of county auditor as to school statistics, etc.	§ 284 (4064)	Compensation of auditor.

§ 277. [Annual report of board of education; its contents.] (§ 4057.) The board of education of each district shall make a report to the county auditor, on or before the first day of September in each year, containing a statement of the receipts and expenditures of the board, the number of schools sustained, the length of time such schools were sustained, the enrollment of pupils, the average monthly enrollment, and average daily attendance, the number of teachers employed, and their salaries, the number of school houses and school rooms, and such other items as the commissioner of common schools may require. (1888, April 11; 85 v. 192, 195; Rev. Stat. 1880; 70 v. 195, § 75; S. & C., 1353.)

§ 278. [In what form to be made, etc.] (§ 4058.) The report shall be made on blanks which shall be furnished by the commissioner of common schools to the auditor of each county, and by the auditor to each school clerk in his county; and each board of education, or officer or employe thereof, or other school officer in any district or county, shall, whenever the commissioner so requires, report to him direct, upon such blanks as he shall furnish, any statements or items of information that he may deem important or necessary. (70 v. 195, § 75.)

§ 279. [Reports by superintendents and teachers.] (§ 4059.) Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor and state commissioner of common schools, as required by the provisions of this title and shall withhold the pay of such teachers and superintendents as fail to file the reports required of them; the records of each school shall, in addition to all other requirements, be so kept as to exhibit the names of all pupils enrolled therein, the studies pursued, shall indicate the character of the work done, the standing of each pupil, and shall be as near uniform throughout the state as may be practicable; said boards may require superintendents and teachers to report such matters as they deem important or necessary for information in regard to the management and conduct of the schools and to make such suggestions and recommendations as they can deem advisable relative to methods of instruction, school management, or other matters of educational interest; and the board of education of each city district shall prepare and publish annually a report of the condition and administration of the schools under its charge, and include therein a complete exhibit of the financial affairs of the district. (97 v. 334.)

Boards of education have power to supply themselves with all blank books, order books and stationery necessary for the transaction of their official business, and also to supply teachers with registers and necessary stationery.

Every teacher should keep a daily record of the attendance of each pupil enrolled in his school, and for this purpose should be supplied by township or other district board with a suitable school register.

Every teacher should record in permanent form *the scholarship of each pupil*, including in the record, as left at the end of each term, the point in each text-book reached by the pupil. In the rural schools, at least, it is better that the same register which is used for recording attendance, be used to record the standing of the pupils also for each term as a matter of great convenience to the incoming teacher. These registers should be returned each term to the clerk of the board of education, and it would be well if all boards would adopt the rule that no order should be issued to a teacher for his final payment until such deposits had been made. It would also be well if the teachers in rural districts were required to send to the

clerk, for the information of the board, a statement as to the advanced classes of the school, the points they have reached in their studies, and whether these advanced pupils intend to prosecute their studies further, in order that boards may intelligently provide instruction for such pupils.

§ 280. [Duties of county auditor as to school statistics, etc.] (§ 4060.) The auditor of each county shall, on or before the twentieth day of September, annually, prepare, and transmit to the commissioner of common schools an abstract of all the returns of school statistics made to him from the several districts in his county, according to the form prescribed by the commissioner, and a statement of the condition of the institute fund, and such other facts relating to schools and school funds as the commissioner may require; he shall also cause to be distributed all such circulars, blanks and other papers, including school laws and documents, in the several school districts in the county, as the commissioner may lawfully require; and if the auditor neglect to prepare and return any of the abstracts or reports herein required the county commissioners shall withhold from him all compensation for his services under this title. (1888, April 11; 85 v. 192, 195; Rev. Stat. 1880; 70 v. 195, § 123; S. S., 705.)

§ 281. [Penalties against auditor and clerk.] (§ 4061.) The auditor shall also be liable on his bond for any such neglect, in a sum not less than three hundred nor more than one thousand dollars, on complaint of the commissioner of common schools; and if the clerk of the board of education of any district fail to make the annual returns of school statistics required by this title, to the county auditor, he shall be liable on his bond in a sum not less than fifty nor more than three hundred dollars, on complaint of the county auditor, or of the board of education, to be recovered in a civil action in the name of the state, and when collected to be paid into the county treasury, and applied to the use of common schools in such district. (70 v. 195, § 123; S. & S., 706.)

§ 282. [When auditor to appoint person to make report.] (§ 4062.) Upon the neglect or failure of the clerk of the board of education of any district to make the reports required in this title, and by the time specified, the county auditor shall

appoint some suitable person, resident of the district, to make such reports, who shall receive the same compensation therefor, and in the same manner, as is allowed by laws for like services. (70 v. 195, § 123; S. & S., 706.)

§ 283. [**Further penalties against auditor.**] (§ 4063.) A county auditor who willfully or negligently fails, in any year, to transmit to the commissioner of common schools the abstract of enumeration required by section forty hundred and thirty-nine (§ 253), or to perform any other duty required to him under this title, shall be liable on his bond to the extent of twice the sum lost to the school districts of his county in consequence of such failure, which sum shall be recovered in a civil action against him, on his bond, in the name of the state, before any court of competent jurisdiction; and the money so recovered shall be paid into the county treasury, for the benefit of such districts, and apportioned in the same manner as the school funds so lost would have been apportioned. (70 v. 195, §§ 81, 124.)

§ 284. [**Compensation of auditor.**] (§ 4064.) The commissioners of each county shall allow the county auditor, annually, a reasonable compensation for his services under this title, not to exceed five dollars for each city, village, special, and township school district in his county to be paid out of the county treasury; but before such allowance shall be made for any year the auditor shall present to the commissioners a statement, officially certified and signed by the commissioner of common schools, that he has transmitted to the commissioner all reports and returns of statistics for that year required by this title. (70 v. 195, § 125.)

CHAPTER 12.

BOARDS OF EXAMINERS.

SECTION.		SECTION.	
§ 285 (4065)	State board; their appointment; terms; vacancies.	§ 297 (4076)	Annual report of clerk, and his bond.
§ 286 (4066)	Power to issue three grades of life certificates; record thereof.	§ 298 (4077)	Boards of examiners in city district; appointment and removal; filling of vacancies; village boards of examiners abolished.
§ 287 (4067)	Effect thereof; may be revoked for cause.	§ 299 (4078)	Standard of qualifications for teachers; examination of schools; law governing board in examining teachers; special examiners; their oath; duty of school superintendents.
§ 288 (4068)	Examination fees, their disposition; compensation of members; stationery.	§ 300 (4079)	Organization of board; bond of clerk.
§ 289 (4069)	County boards; appointment, term, and vacancies; removals; notice of appointments; disqualifications.	§ 301 (4080)	Meetings for examinations; notice.
§ 290 (4070)	Organization of county boards of examiners; reports of clerk; compensation of clerk.	§ 302 (4081)	Granting, renewal and revocation of certificates; age limit; hearing on revocation of certificate.
§ 291 (4071)	Meetings for examinations; majority's power; examination fee.	§ 303 (4082)	Nature of certificates to be granted; branches of study.
§ 292 (4071a)	Uniform system of examinations; preparation and distribution of examination questions.	§ 304 (4083)	Compensation of examiners; incidental expenses.
§ 293 (4072)	Disposition of fees.	§ 305 (4084)	Records and reports; duties of the clerk; disposition of fees.
§ 294 (4073)	Granting renewal and revocation of certificates; age limit; hearing on revocation of certificates; expenses.	§ 306 (4085)	Applicants who fail may appeal to the state commissioner of common schools; method of procedure.
§ 295 (4074)	Certificates of different grades; prerequisites to employment; branches of study; value of life certificates.		
§ 296 (4075)	Compensation and expenses of board.		

STATE BOARD OF EXAMINERS.

§ 285. [State board; appointment; term; vacancies.] (§ 4065.) There shall be a state board of examiners, which shall consist of five competent persons, resident of the state, to be appointed by the state commissioner of common schools; not more than three of whom shall belong to the same political party. The term of office of such examiners shall be five years; the term of one of the examiners shall expire on the 31st day of August, each year, [and when one of which shall expire on the 31st of August every year], and when a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the commissioner shall fill the same by appointment for the full or unexpired term, as the case demands. (85 v. 330; 81 v. 95; Rev. Stat., 1880; 70 v. 195, § 85; S. & S., 709.)

§ 286. [Power to issue three grades of life certificates; record thereof.] (§ 4066.) The board thus constituted may issue three grades of life certificates to such as are found to possess the requisite scholarship, and who exhibit satisfactory evidence of good moral character and of professional experience and ability; the certificate shall be for different grades of schools according to branches taught, and shall be valid in the schools specified therein. The clerk of the board shall keep a record of the proceedings, showing the number, date and grade of each certificate, to whom granted, and for what branches of study, and shall report such statistics to the commissioner, annually, on or before the 31st day of August. (85 v. 330; 78 v. 39; Rev. Stat., 1880; 70 v. 195, § 86; S. & S., 709.)

DISCRETION OF BOARD TO GRANT CERTIFICATE.—The statute seems to leave it within the sole discretionary power of the board of state examiners to issue or withhold a certificate, and the courts will not interfere with the exercise of this discretion, and therefore if the state board refuses to grant a certificate the applicant has no further remedy except to appear again for examination. As this board is directly under the control of the state commissioner of the common schools, the legislature has, no doubt, deemed that it could very well entrust this discretionary power with such board. If the board, however, for a malicious purpose, refuse to grant the certificate, the applicant might recover damages in a suit in a court of law.

§ 287. [Effect thereof; may be revoked for cause.] (§ 4067.) All certificates issued by such board shall be countersigned by the commissioner of common schools; and such certificates shall supersede the necessity of any and all other examinations of the persons holding them, by any board of examiners, and shall be valid in any school district in the state, unless revoked by the state board for good cause. (70 v. 195, § 87; S. & S., 709.)

REVOCATION OF STATE CERTIFICATE.—The statute gives the right of the state board of examiners to revoke for good cause, and what may constitute good cause seems to be left very largely in the discretion of the state board, and this follows, no doubt, from the fact that the board has a discretionary power to grant, and therefore ought to have the same right to revoke. There would be no doubt but what any of the causes which would justify a county board of examiners in revoking a county certificate would be held a good cause within the meaning of the above section. See section 4073 (§ 294) as to revocation of county certificates. There is no procedure adopted or suggested by the statutes whereby the applicant is entitled to a hearing upon such revocation, but in all fairness to the applicant, it might be well for the board to proceed in the same manner as county examiners proceed in revocation of a county certificate.

§ 288. [Examination fees; their disposition; compensation of members; stationery.] (§ 4068.) Each applicant for a certificate shall pay to the board of examiners a fee of five dollars; and the clerk of the board shall pay to the state treasurer, all fees received, and file with the state auditor a written statement of the amount. Each member of the board shall be entitled to receive five dollars for each day he is necessarily engaged in official service, and also six cents per mile each way for traveling from and to his place of residence, by the most direct route of public travel to and from the places of meetings of the board, to be paid out of the state treasury on the order of the state auditor; all books, blanks and stationery required by the board shall be furnished by the secretary of state. (1888, April 16; 85 v. 330; 82 v. 100; Rev. Stat., 1880; 70 v. 195, § 88; S. & S., 709.)

§ 289. [County boards; appointment, term, and vacancies; removals; notice of appointment; disqualifications.] (§ 4069.)

There shall be a county board of school examiners for each county, which shall consist of three competent persons to be appointed by the probate judge. Two of such persons shall have had at least two years' experience as teachers or superintendents, and shall have been within five years, actual teachers in the public schools. Each person so appointed shall be a legal resident of the county for which he is appointed, and, should he remove from the county during his term, his office shall be thereby vacated and his successor be appointed. No examiner shall teach in, be connected with, or be financially interested in any school which is not supported wholly or in part by the state, or be employed as an instructor in any teachers' institute in his own county; nor shall any person be appointed to the position, or exercise the office of examiner who is agent of or is financially interested in any book publishing or book-selling firm, company or business, or in any educational journal or magazine. If an examiner becomes connected with or interested in any school not under state control, or is employed in any such institute in his own county, or becomes an agent of or interested in any book company or journal, or fails to hold the necessary teacher's certificate, or removes from the county, the probate judge shall forthwith, upon being apprised of such fact, remove such examiner and appoint his successor. The term of office of such examiner shall be three years. The term of one of the examiners shall expire on the thirty-first day of August, each year; but the probate judge shall revoke the appointment of any examiner, upon satisfactory proof that he is inefficient, intemperate, negligent, guilty of immoral conduct, or that he is using his office for personal or private gain. When a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the probate judge shall promptly fill the same by appointment for the full or unexpired term, and said judge shall, within ten days, report the same to the state commissioner of common schools, together with the names of the other members of the board and the date of the expiration of their several terms of office. The members of county boards of examiners, as now constituted, shall serve for the full term for which they were appointed unless removed for cause as pro-

vided for in section forty hundred and sixty-nine (§ 289) as it existed previous to this enactment. (97 v. 369,)

Appointment and Qualifications of Examiner.

Revocation of Certificate.

Discretionary Power to Revoke.

Eligibility—Oath of Office.

Form of Oath.

APPOINTMENT AND QUALIFICATION OF EXAMINER.—The probate judge is invested with absolute discretionary power in his selection of the persons who shall constitute the county board of school examiners. The statute, however, places some restrictions and qualifications as to what may constitute a competent person for such a position and the first is that "two members of the board shall have had at least two years' experience as teachers or superintendents and shall have been within five years actual teachers in the public schools," and second, that the examiner shall be a resident of the county. In addition to these two statutory qualifications no one ought to be appointed an examiner who is then in such a condition that even if he were appointed, there would be good cause for his removal. It might be well to say that the school examiner should not only possess the educational requirements, but that his character and reputation in all moral matters should be of the highest, for unless he possesses these qualifications he can not with absolute impartiality pass upon the qualifications of those under him, for the very important position of school teacher.

REVOCATION OF AUTHORITY.—The statute gives several grounds which disqualify a person from being a school examiner and justify his removal. First. That he shall not teach in or be connected with, or be financially interested in any school which is not supported wholly or in part by the state, or be employed as an instructor in any teachers' institute in his own county. By this provision the legislature has intended to keep the examiner free to pass upon the merits of all applicants and prevent him from establishing a school and by reason of his being examiner, getting pupils and teachers to attend his school, under the possible accusation of exercising a partiality in their favor. It is very broad, and will not allow him to be connected with any other than the public schools. Nor will it even allow him to be an instructor in a teachers' institute in his own county. The second ground for removal would be for the examiner to become the agent or financially interested in any book publishing or book or magazine house or firm. This, likewise, is very broad, and it would not be confined to the limits of his own county. Under this provision he would be subject to removal if he became the agent anywhere else of any such book concern or financially interested in it, no

matter where located. There might be some question whether it is made to include anything other than firms engaged in publishing school books, etc., but it seems that the language is broad enough to embrace all companies engaged in any kind of book business. While the selling of miscellaneous books might not directly interfere with the examiner in the proper discharge of his duties, yet the examiner might by his position impose on applicants in soliciting them for the purchase of such books, etc. The third ground for revocation of the certificate is the removal of the examiner from the county. Outside of these three grounds, the probate judge shall revoke such appointment when he becomes convinced of satisfactory proof that the examiner is inefficient, intemperate, negligent, guilty of immoral conduct, or that he is using his office for personal or private gain.

DISCRETIONARY POWER TO REVOKE.—The statute makes it mandatory upon the probate judge to remove the examiner if satisfactory proof is given of the existence of any of the above causes. No mode of procedure is suggested by the statute, nor what statutory proof is required, and it seems to me that these matters are left entirely in the discretion of the probate judge, and unless it can be shown that the judge acted maliciously and without cause, a higher court would not interfere with the exercise of this discretion. Certainly, what would be a good cause for the revocation of the teacher's certificate, would be good cause for the revocation of the commission of the examiner.

ELIGIBILITY—OATH OF OFFICE.—While the position of the school examiner is not an office within the meaning of the constitutional provision, "that any person shall be elected or appointed to any office in this state unless he has the qualifications of an elector," yet it is such an office within the meaning of the Constitution that would require the incumbent to take an oath to support the Constitution of the United States, of this state as well, as that he would faithfully and impartially discharge the duties pertaining to his position. Therefore, every examiner should, before he enters upon the discharge of his position, take an oath of office. The position being such that the incumbent need not possess the qualifications of an elector, women may be appointed to be school examiners.

The oath of office may be in the following form:

Form of Oath.

I, A. B., do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Ohio, and will faithfully and impartially discharge the duties of school examiner in and for the county of, state of Ohio, during the time that I may be an incumbent of said office.

§ 290. [Organization of county boards of examiners; reports of clerk; compensation of clerk.] (§ 4070.) The board of county school examiners shall, annually, in the month of September, organize by choosing from its members a president, a vice-president, and a clerk; the president shall preside at all the meetings of the board, and in his absence the vice-president shall preside; the clerk shall keep a full and accurate record of the proceedings of the board, showing the number and date and character of each certificate issued, and to whom, for what term, and for what branches of study, and such other statistics relating to the examination and the proceedings of the board as the state commissioner of common schools may require, and in the form and manner he may require, and shall make a report of all such items annually on or before the first day of September; the clerk shall receive for his services as clerk four dollars for each examination of sixty applicants or less, six dollars for each examination of more than sixty applicants and less than one hundred, eight dollars for each examination of one hundred applicants or more, to be paid out of the county treasury on the order of the county auditor, but no order shall be drawn for the month of August until the clerk produce a receipt from the state commissioner of common schools that he has filed all the reports for the year required by said commissioner. The board shall make all needful rules and regulations for the proper discharge of its duties and the conduct of its work, subject to statutory provisions and the approval of the state commissioner of common schools. (97 v. 370.)

POWERS AND DUTIES OF BOARD.—The powers of the board of examiners are strictly laid out by statute. They constitute, no doubt, the lowest form of a *quasi* corporation. They would have no power to bind any other body or person with any acts that they might do, except within the powers given to them. For all wrongful acts, if responsible at all, they would be individually so held. Where matters are of a discretionary character they would not be liable unless they maliciously committed the wrong. However, for acts of a ministerial character, if performed in such a way that another suffered damage therefrom, they would be liable, and if such acts were performed by them as a board they would be joint tort-feazors. The board in all its acts should observe the ordinary rules applicable to organizations consisting of several persons, creat-

ed by law, in order to give legality to any matter properly coming before them. The individual acts of a member would not be the acts of the board. The statute specifically provides for the board's organization and its proper officers and that a record of its proceedings should be had. The ordinary parliamentary rules would govern the action of such a body, and before any act can be legally done it would require the affirmative action of a majority of such a board.

§ 291. [Meetings for examinations; majority's power; examination fee.] (§ 4071.) Each board shall hold public meetings for the examination of applicants for county teachers' certificates on the first Saturday of every month of the year, unless Saturday should fall on a legal holiday, in which case, said examination shall be held on the succeeding Saturday, at such place or places, within the county as will, in the opinion of the board, best accommodate the greatest number of applicants, notice of which shall be published in two weekly newspapers of different politics printed in the county, if there are two papers thus published, if not, then a publication in one only is required. In no case shall the board hold any private examination or antedate any certificate. A majority of the board may examine applicants and grant certificates; and as a condition of any applicant being admitted to take the examination, each such applicant shall pay to the board for the use of the county institute a fee of fifty cents. (97 v. 371.)

Because a majority of the board may do business, etc., does not mean that it shall be done otherwise than in the regular way that a body composed of several individuals should transact business (see § 89).

A certificate issued by a board of examiners in one county is not valid in the other counties of the state.

An official trust can not be delegated. See III Central Law Journal, p. 472. The board has no authority, therefore, to appoint a substitute to perform the duties of any of its members. A certificate depending on the signature of such substitute for its validity is worthless. As all citizens are bound to know the law, so candidates and school authorities are bound to know who are legal, or, at least, *de facto* public officers. (Com.)

§ 292. [Uniform system of examinations.] (§ 4071a.) After the first day of September, 1904, the questions for all county teachers' examinations, throughout the state, shall be

prepared and printed under the direction of the state commissioner of common schools, and a sufficient number of lists shall be sent, under seal, to the clerks of the said boards of examiners not less than five days before each examination, said seal to be broken at the time of the examination at which they are to be used, and in the presence of the applicants and a majority of the members of the examining board.

[Penalty for publishing or giving information about questions or unlawfully possessing same.] Any person or persons connected with the preparation, printing, distribution, or handling of said questions, who shall, prior to the examination in each branch of study, make the same public in any manner, or give information in regard to the nature or character of the questions to any applicant for a certificate or other person, and any person or persons other than those connected with the preparation, printing, distribution, or handling of said questions who shall be found in possession of any of said questions prior to the distribution of the same for the use of applicants at any examination, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty dollars nor more than one hundred dollars and shall be imprisoned not less than thirty days nor more than ninety days. (98 v. 228; 97 v. 371, April 25, 1904.)

See questions in appendix.

§ 293. [Disposition of fees.] (§ 4072.) The clerk of the board of county school examiners shall promptly collect all fees from applicants at each examination and pay the same into the county treasury quarterly, and he shall file with the county auditor a written statement of the amount, and the number of applicants, male and female, examined during the quarter; and all such money thus received shall be set apart by the auditor for the support of county teachers' institutes, to be applied as provided for in chapter thirteen of this title. (97 v. 371.)

§ 294. [Granting renewal and revocation of certificates; age limit; hearing on revocation of certificate; expenses.] (§ 4073.) The county board of school examiners may grant teachers' certificates for one, two, three, five and eight years from the day of the examination; and said certificates shall be valid in

all village, township, and special school districts of the county wherein they are issued, but in all school districts situated in two or more counties teachers' certificates obtained in either county shall be valid in such districts. All teachers' certificates granted for one, two or three years shall be regarded as provisional certificates and shall be issued only in compliance with such reasonable regulations and standards and upon such ratios as the board may adopt, but no such certificate shall be renewed except upon examination; provided, that when any teacher holding a two year certificate and having for the last five years preceding been continuously engaged in teaching in the same county, said teacher shall be entitled to have his or her certificate renewed by passing an examination in theory and practice; all certificates granted for five years, or eight years, shall be regarded as professional certificates and shall be renewable without examination at the discretion of the examining board, if for three years preceding the date of the application the holders thereof shall have been engaged in teaching, not less than twelve months of such time being spent in the same district and the board of examiners being satisfied as to the moral character and the professional attainments of the holders thereof. No certificate shall be issued to any person who is less than eighteen years of age; and if at any time the recipient of a certificate be found intemperate, immoral, incompetent, or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered; but before any hearing is had by a board of examiners on the question of the revocation of a teacher's certificate, the charges against the teacher shall be reduced to writing and placed upon the records of the board, and the teacher shall be notified in writing as to the nature of the charges and the time set for the hearing, such notice to be served personally or at his residence, and the teacher shall be entitled to produce witnesses and defend himself; the examining board shall have power to send for witnesses and examine them on oath or affirmation touching the matter under investigation, and said oath or affirmation may be administered by any member of the board of examiners. The fees and the per diem of examiners for con-

ducting such investigation at three dollars a day each and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board, and be paid out of the county treasury upon the order of the auditor. (97 v. 371.)

Granting Certificates.

Good Moral Character.

Revocation of Certificate.

Procedure to Revoke.

Form of Resolution.

Notice to Teacher.

Form of Notice.

Service of Notice.

Hearing, etc.

Form of Resolution.

GRANTING CERTIFICATES.—The board of examiners must proceed in the manner provided by statute in the granting of certificates, and they may adopt such rules and regulations thereto as may be approved by the state commissioner of schools. Section 4070 (§ 290). The statute must be strictly pursued in reference to the certificate and the various branches of education which the certificate is intended to cover. There is no limitation as to residence of the applicant. A certificate can not be granted to a person who is under eighteen years of age, and will not be valid in any county other than that in which it is granted, except where school districts include part of two counties, then a certificate granted in either county will be valid. No certificate should be granted to any one who is then in such a condition that if he were appointed the examiners might revoke his certificate. See section 4071 (§ 29).

GOOD MORAL CHARACTER.—There is nothing said in the above section about the good moral character of the applicant, but the next section of the Revised Statutes makes it mandatory on the teacher to have a certificate from the board of examiners that he is of *good moral character*. And so it is incumbent upon the examiners not only to examine the applicant in the required statutory matters of the grade of certificate which he seeks, but also examine the applicant's moral character. What would constitute *good moral character* would be a question upon which persons in different avocations and conditions of life would differ upon. What it means, however, is that the applicant is of such a character that he can successfully teach his pupils in the way that will cause them to become good citizens and whose example will be such as not to lead his pupils into doing anything wrong or immoral. In a Michigan case, *Weiman v. Mabee*, 45 Mich., 484, it was held "that a man who habitually violated his duty by profanity, and Sabbath breaking, was of a bad moral character, and was not a proper person to be licensed to teach in a public school." It will be observed that the statute uses the words, not *moral*

character, but good moral character. So it would seem that a higher standard is required than that of mere morality. Whether or not the possession of a habit, which is conceded be to injurious to the health, such as cigarette smoking, would be included, may be one of doubt, but considering the influence that the teacher has over his pupils by the habits he exercises, it would seem to the author that even such a habit as this is one which should deprive the applicant from a certificate, as being one not of a *good moral character*.

REVOCATION OF CERTIFICATE.—If at any time the recipient of the certificate be found intemperate, immoral, incompetent, or negligent, the examiners or any two of them may revoke the certificate. This power of revocation is a discretionary power vesting in the examiners, and they are judges as to when such teacher is intemperate, immoral, incompetent, or negligent. Upon this question one of our common pleas judges has well said:

“I am fully convinced that the board of school examiners is the only tribunal authorized to hear and determine the question as to whether a teacher’s certificate shall be revoked or not, and that its action in the matter is final.

“Said examiners are selected and appointed by the probate court on account of their learning, ability, honor and fitness for the position, and when so selected and appointed, they are by statute fully clothed with all the powers of granting certificates and revoking the same under the provisions of the statute.

“The teacher in our public schools occupies one of the most important and responsible positions in the community. Our children are intrusted to his care for education and guidance. The parents as well as the pupils have a right to look up to him as an example and guide to their conduct. And so long as he maintains their confidence his examples are followed and his conduct imitated. By intemperate habits or immoral conduct he loses the respect of the parents and pupils, and his usefulness is gone. And when it is ascertained by the examiners that a teacher is intemperate or immoral, it is made their duty by statute to deprive him of the license which they have given him to teach, by revoking his certificate. The duty of revoking this certificate must be placed somewhere, and the legislature has seen fit to place it in the power of the board which granted it, and not in any court. It has not provided for a review of the examiner’s action, and hence I am of the opinion that it was legislative intent that that action should be final.” 1 N. P., 154. (The State of Ohio ex rel. Moses Peabody v. The Board of County School Examiners of Lorain Co.)

PROCEDURE TO REVOKE.—The present section of the Revised Statutes provides that before such certificate is revoked that the charges against the teacher shall be reduced to writing and placed upon the records of the board, and the teacher shall be notified in writing as to the nature of such charges, and the time set for hearing, and that such notice shall be served personally or at the teacher's residence and the teacher and the board shall have power to send for witnesses and examine them. This charge no doubt could be made in the form of a resolution and in that way it would become a part of the records in the regular manner. If brought in the form of a resolution it should set forth with sufficient clearness the matter complained of, so as to apprise the teacher of the nature of the charge that he is required to answer. If the charge is intemperance, it should so state and set forth times when and where the teacher was intemperate. If the charge be immorality, specific acts likewise should be stated. If it be incompetency, the charge should state in what respect the teacher is incompetent, and so if the charge is one of negligence, in like manner it should set out some specific facts constituting the alleged negligence. The resolution might be in the following form:

Form of Resolution.

Whereas, information has been brought to this board that one C. D., a teacher in this county holding a certificate granted by this board, is guilty of intemperance in this, to wit:

That on the day of he was in an intoxicated condition on the public streets of the city of, and

That on the day of he was in an intoxicated condition in the presence of the scholars of the school in which he was teaching (or here set out in detail whatever the charge may be).

Resolved, that such charges against the said A. B., teacher, shall be reduced to writing and placed upon the records of this board, and that the same shall be set for hearing on the day of, and that a copy of this resolution and charges therein contained be served personally upon such teacher, or, if not found, left at his usual place of residence, and that the same shall be for hearing on the day of

NOTICE TO TEACHER.—The statute does not say who shall serve the notice, but this duty no doubt would be properly performed by the clerk of the board of examiners. Nor does it say what length of time should be given between the time of service of notice and the time of hearing. This should be a reasonable time, depending largely upon the exigencies of the case. If the offense is such that there is an immediate injury to the scholar, the hearing ought to be held in a very short time. In any case it ought not to be longer than sufficient time for the teacher to properly prepare his case.

The following might serve as a form:

Form of Notice.

To A. B., Teacher in the Common Schools of County:

You are hereby notified that at a meeting of the school examiners held on the day of, the following resolution was passed (here copy resolution and charges). You will take notice accordingly of the same and be prepared to meet such charges therein set forth at the time therein specified for hearing before this board at its usual place of meeting at

SERVICE OF NOTICE.—Care should be taken that the notice is served as the statute directs. The clerk should serve the notice by copy, keep the original and make a report on the back of the notice of the time when and where and the manner in which the service was made upon the teacher and a memorandum of this should be placed upon his minutes.

HEARING, ETC.—At the time appointed for hearing, the board should convene for that purpose and see whatever testimony may be offered in sustaining the charges or in refutation of the same. The usual order preserved in court proceedings might be followed, although they are not absolutely essential. When all the testimony has been adduced, the board should determine whether or not the teacher is guilty of the charges, and should make a finding in accordance therewith, and this should be in the form of a resolution, which may be as follows:

Form of Resolution.

In the Matter of the Charges Heretofore Preferred Against A. B., a Teacher in the Schools of This County:

The same came on to be heard pursuant to a former resolution of this board, and the same was submitted upon the testimony of witnesses, it appearing to the board that notice thereof had been given to said A. B., teacher, as required by law; and,

It further appearing that the said A. B., teacher, is guilty (or not guilty, as the case may be) of the charges made against him.

Therefore, be it further resolved that the certificate granted to him to teach schools in this county on the day of be, and the same is hereby revoked.

§ 295. [Certificates of different grades; prerequisites to employment; branches of study; value of certain life certificates.] (§ 4074.) From and after the first day of September, 1904, three kinds of teachers' certificates only shall be issued by county boards of school examiners; said kinds of teachers' certificates shall be styled respectively:

[**Elementary.**] "Teacher's Elementary School Certificate," which shall be valid for all branches of study below high school rank.

[**High school.**] “Teacher’s High School Certificate,” which shall be valid for all branches of study in recognized high schools and for superintendents, and “Teacher’s Special Certificate,” which shall be valid in schools of all grades, but only for the branch or branches of study named therein.

[**Branches elementary.**] From and after the first day of September, 1905, no person shall be employed or enter upon the performance of his duties as a teacher in any elementary school supported wholly or in part by the state in any village, township, or special school district who has not obtained from a board of school examiners having competent jurisdiction a certificate of good moral character and that he or she is qualified to teach orthography, reading, writing, arithmetic, English grammar and composition, geography, history of the United States, including civil government, physiology including narcotics, literature, and that he or she possesses an adequate knowledge of the theory and practice of teaching;

[**Branches high school.**] and no person shall be employed or enter upon the performance of his duties as a teacher in any recognized high school supported wholly or in part by the state in any village, township, or special school district, or act as superintendent of school in such district, who has not obtained from a board of examiners, having competent jurisdiction a certificate of good moral character and that he or she is qualified to teach literature, general history, algebra, physics, physiology including narcotics, and, in addition thereto, four branches elected from the following branches of study: Latin, German, rhetoric, civil government, geometry, physical geography, botany and chemistry; and that he or she possesses an adequate knowledge of the theory and practice of teaching; and no person shall be employed and enter upon the performance of his duties as a special teacher of music, drawing, painting, penmanship, gymnastics, German, French, the commercial and industrial branches, or any one of them, in any elementary or high school supported wholly or in part by the state in any village, township, or special school district, who has not obtained from the board of examiners having competent jurisdiction a certificate of good moral character and that he or she is qualified to teach the special branch or branches of study, and in addition thereto, that he or she

possesses an adequate knowledge of the theory and practice of teaching;

[**Renewal without examination.**] provided, that county boards of school examiners are authorized to recognize or renew, at their discretion, in the appropriate kind and for the same length of time any certificate or certificates, held by teachers who may apply for such recognition or renewal prior to the first day of September, 1905, and provided, further, that no person holding a common school life certificate issued by the board of state examiners shall be required to hold any other certificate to teach in the elementary schools of the state, nor shall any holder of said common school life certificate be required by any board to be examined in any of the branches covered by said certificate in order to be granted the teachers' high school certificate authorized herein. (97 v. 372.)

See APPENDIX, for nature of questions.

Comments.

Grades of Certificates.

Compensation can not be Col-
lected Unless Teacher Has
Proper Certificates.

COMMENTS.—See section 4051 (271).

For instruction as to the effect of alcoholic drinks and narcotics on the human system, in the public schools, see section 4020-23.

Qualifications, etc., of teachers of day schools for deaf children, see act following section 3901.

The above section forbidding the employment of a teacher who has no certificate was not intended to guard against a contract, but against incompetency; hence, if the teacher gets his certificate after the contract, but before entering on his duties, it is sufficient; the latter is the employment. (School District v. Oxford Tp., 22 O. S., 194.)

No money can be legally drawn for teaching a day without a certificate, and to receive public money illegally is a crime under sections 6841 (§ 266) and 6846.

As to penalty for bribing or attempting to bribe an officer, see section 6900.

Teachers in schools at children's homes and in kindergarten schools, supported by public funds, must hold certificates.

GRADES OF CERTIFICATES.—The above section grades the certificates into three different kinds, to wit: elementary school certificates, high school certificates, and special certificates, and defines with clearness, and also requires that no person

shall be employed as a teacher in any of the different grades of schools unless he has obtained a proper certificate.

COMPENSATION CAN NOT BE COLLECTED UNLESS TEACHER HAS PROPER CERTIFICATE.—Unquestionably a teacher can not recover compensation for teaching unless he has the required certificates (*School Directors v. Jennings*, 10 Ill. App., 643; *Harrison Tp. v. Conrad*, 26 Ind., 337). And this is true, even though the school board might agree to dispense with such certificate (*Barr v. Deniston*, 19 N. H., 170). Neither will the fact that a certificate has been afterwards granted be sufficient to permit collection for services rendered before (*Putnam v. Irvington*, 69 Ind., 80; *Butler v. Haines*, 79 Ind., 575).

In Tennessee the statute has made it an indictable offense to employ a teacher who has no certificate (*Robinson v. State*, 2 Coldw. (Tenn.), 181). Neither can a recovery be had if the examiners wantonly refuse to examine the teacher (*Jackson v. Hampden*, 20 Me., 37).

A power to recover in such a case has been very thoroughly discussed in the following case:

In the case of *Goose River Bank v. Willow Lake S. Tp.*, 44 N. W. Rep. (N. D.), 1002, it was held: "Every contract relating to the employment of a teacher who does not hold a lawful certificate of qualification, is void by the express terms of the statute, and every warrant issued in payment of services of such teacher is without consideration, and void. School township warrants are not negotiable instruments, in the sense that their negotiation will cut off defenses to them existing against them in the hands of the payee. The officers of a school township can not estop the township by a representation, express or implied, that the facts to authorize the issue of a lawful warrant exist. Where a contract is expressly prohibited or declared void by statute, retention of the fruits of such contract will not subject a municipality to liability under the contract or on a *quantum meruit*. A person who assists a public officer in depriving the public of the benefits of a statutory protection designed to guard the people against unfit and incompetent teachers has no standing in court, and his assignee will receive no greater consideration.

"There is no force in the position that the defendant, having received the benefit of the teacher's service, is liable. Such a doctrine would defeat the policy of the law, which is to give the people of the state the benefit of trained and competent teachers. The law recognizes only one evidence that that policy has been regarded—the certificate of qualification. If the defendant could be made liable by the mere receipt of the benefit of the services rendered, the law prohibiting the employment of teachers without certificates, and declaring void

all contracts made in contravention of that provision, would be, in effect, repealed, and the protection of the people against incompetent and unfit teachers, which such statute was enacted to accomplish, would be destroyed. Where a contract is void because the express declaration of a statute, or because prohibited in terms, the retention by a municipality of the fruits of such a contract will not subject it to liability, either under the contract or upon a *quantum meruit* (Dickinson v. City of Poughkeepsie, 75 N. Y., 65; McBrien v. City of Grand Rapids, 22 N. W. Rep., 206; Thomas v. Richmond, 12 Wall., 349; Argenti v. San Francisco, 16 Cal., 255; City of Litchfield v. Ballou, 114 U. S., 190; 5 Sup. Ct. Rep., 280. See also Tube-works v. City of Chamberlain (Dak.), 37 N. W., Rep., 762). This is particularly true in a case like the one at bar, where no person can teach without the certificate, without being actually or legally in collusion with local officers to defeat a wise and salutary statute, enacted as a barrier against the employment of unqualified teachers. The person who teaches without the certificate has violated the letter and spirit of the law. The wrong done is without remedy. The people who have thus had this barrier torn from about them have no redress. Shall the wrongdoer be compensated for aiding the school township officers in breaking this down barrier, thus depriving the people of the protection of this important law? In this connection the language of the court in Thomas v. Richmond, 12 Wall., 349, is very applicable: 'The issuing of bills as a currency by such a corporation, without authority is not only contrary to positive law, but, being *ultra vires*, is an abuse of the public franchises which have been conferred upon it, and the receiver of the bill, being chargeable with notice of the wrong, is in *pari delicto* with the officers, and should have no remedy, even for money had and received, against the corporation upon which he has aided in inflicting the wrong. The protection of public corporations against such unauthorized acts of their officers and agents is a matter of public policy, in which the whole community is concerned, and those who aid in such transactions much do so at their peril.'

"In City of Litchfield v. Ballou, 114 U. S., 190 (5 Sup. Ct. Rep., 820), the same court said: 'The money received on the bonds having been expended, with other funds raised by taxation, in erecting the water works of the city, to impose the amount thereof as a lien upon these public works would be equally a violation of the constitutional prohibition as to raise against the city an implied assumpsit for money had and received. The holders of the bonds and agents of the city are *particeps criminis* in the act of violating that prohibition, and equity will no more raise a resulting trust in favor of the bondholders than the law will raise an implied assumpsit against a

public policy so strongly declared' The judgment of the district court is affirmed. All Concur."

§ 296. [Compensation and expenses of board.] (§ 4075.)
Each member of the county board of school examiners shall be entitled to receive ten dollars for each examination of sixty applicants or less, fourteen dollars for each examination of more than sixty applicants and less than one hundred, eighteen dollars for each examination of one hundred applicants or more, to be paid out of the county treasury on the order of the county auditor; all books, blanks and stationery required by the board shall be furnished by the county auditor; the board may contract for the use of suitable rooms in which to conduct examinations, for the printing of examination questions, may procure fuel and light, and employ janitors, to take charge of the rooms and keep them in order, and the expenses so incurred, together with the cost of advertising required by section *forty hundred and seventy-one* (§ 291), shall be paid out of the county treasury on orders of the county auditor, who shall issue such orders upon the certificate of the president of the board, countersigned by the clerk. (97 v. 373.)

§ 297. [Annual report of clerk and his bond.] (§ 4076.)
The clerk of the board shall prepare, and forward to the state commissioner of common schools, on or before the first day of September in each year, a statement of the number of examinations held by the board, the number of applicants examined, the total number of certificates granted, and the number for each term mentioned in section *forty hundred and seventy-three* (§ 294), the amount of fees received and paid to the county treasurer, the amount received from the county treasury by the members of the board for their services, and such other statistics and information in relation to the duties of the board as said commissioner may require; and he shall deposit with the county auditor a bond, with surety to be approved by the auditor, in the sum of three hundred dollars, that he will pay into the county treasury, quarterly, the examination fees received by the board, and make the statistical returns required by this chapter. (97 v. 373.)

CITY EXAMINERS.

§ 298. [Boards of examiners in city districts; appointment and removal; filling of vacancy; village boards of examiners abolished.] (§ 4077.) There shall be a city board of school examiners for each city school district, to be appointed by the board of education of the district; such board shall consist of three persons, and the majority of the persons appointed shall have had at least two years' practical experience in teaching in the public schools and all persons appointed shall be otherwise competent for the position and residents of the district for which they are appointed; the term of office of such examiners shall be three years; the term of one-third of the examiners shall expire on the thirty-first day of August each year; but the board of education may revoke any appointment upon satisfactory proof that the appointee is inefficient, intemperate, negligent, or guilty of immoral conduct; when a vacancy occurs in the board, whether from expiration of term of office, refusal to serve, or other cause, the board of education shall fill the same by appointment for the full or unexpired term, as the case demands; and within ten days after an appointment, the clerk of the board of education shall report to the state commissioner of common schools the name of the appointee, and whether the appointment is for a full or an unexpired term; provided, that in city school districts that now have a board of city school examiners consisting of three members, the members of the same shall serve for the full term for which they are appointed; when the board does not consist of three members the same is hereby abolished and a new board shall be appointed, the members to serve for one, two and three years from the thirty-first day of August succeeding the passage of this act. All village boards of examiners are hereby abolished, but certificates issued by said boards shall continue in force within the village school district, for the full time for which they were issued. (97 v. 374.)

APPOINTMENT OF CITY MEMBERS.—In city school districts the law gives the appointing power for school examiners for such districts to the board of education. Like the county examining board it shall consist of three members. The qualifications are very much similar to those of county examiners, and I have no doubt that a woman is eligible to the position, and what was said about the appointment, qualification, and powers of a

county board of examiners is applicable to examiners appointed by the probate judge. The only difference being, that they are appointed by the board of education instead of by the probate judge. The board of education is the board to determine the standard of the qualification of teachers and having determined this standard the board of examiners must conform thereto. If there are any difficult branches or special studies the board may secure assistance for these examiners. Such assistants must have administered to them an oath of office. The appointment should be made within a reasonable short period before the expiration of the term of office of the incumbent, and should be by resolution spread on the minutes. An aye and nay vote need not be had unless demanded by some member and the majority of the quorum present would be sufficient.

§ 299. [Standard of qualification for teachers; examination of schools; law governing board in examining teachers; special examiners; their oath; duty of school superintendents.] (§ 4078.) Each city board of school examiners shall determine the standard of qualification for teachers, and may examine any school in the district when such examination is deemed necessary to ascertain a teacher's qualifications, but in the examination of applicants and the granting of certificates the board shall be governed by the provisions of section *forty hundred and seventy-four* (§ 295), and to secure a thorough examination of applicants in difficult branches, or special studies, the board may secure the assistance, temporarily, of persons of sufficient knowledge in such branches or studies, who shall promise on oath or affirmation, to be administered by the clerk of the board of examiners, to perform the duties of examiner faithfully and impartially, and superintendents of schools shall give to the board all necessary information in reference to branches and special studies to be taught, and the branches of study and grades of school which teachers will be required to teach. (97 v. 374.)

§ 300. [Organization of board; bond of clerk.] (§ 4079.) Each city board of school examiners shall organize during the month of September each year by choosing from its members a president, a vice-president, and a clerk; the president shall preside at all the meetings of the board, and in his absence the vice-president shall preside; the clerk shall perform all the

duties required in this chapter of the clerk of the board of county school examiners in so far as said duties apply, and shall give bond, in the sum of three hundred dollars with surety to be approved by the board of education, conditioned that he will perform faithfully the duties required of him by this chapter, which bond shall be deposited with the clerk of the board of education. (97 v. 375.)

§ 301. [Meetings for examinations; notice.] (§ 4080.) Each board of city school examiners shall hold not less than two meetings each year, notice of which shall be published in some newspaper of general circulation in the district, and the expense of such publication shall be paid as provided in section *forty hundred and eighty-three* (§ 304), and all examinations of applicants shall be conducted at the meetings of the boards thus called, and the examination of each and every applicant shall be in the presence of at least two members of the board. (97 v. 375.)

§ 302. [Granting, renewal and revocation of certificates; age limit; hearing on revocation of certificate.] (§ 4081.) Each city board of school examiners may grant teachers' certificates for one, two, three, five, and eight years from the day of examination; and said certificates shall be valid within the district wherein they are issued. All teachers' certificates granted for one, two, or three years, shall be regarded as provisional certificates and shall be issued only in compliance with such reasonable regulations and standard and upon such ratios as the board may adopt, but no such certificate shall be renewed except upon examination; provided, that when any teacher holding a two year certificate and having for the last five years preceding been continuously engaged in teaching in the same county, said teacher shall be entitled to have his or her certificate renewed by passing an examination in theory and practice; all certificates granted for five years, or eight years, shall be regarded as professional certificates and shall be renewable without examination at the discretion of the examining board, if for three years next preceding the date of the application of the holders thereof shall have been engaged in teaching, not less than twelve months of such time being spent in the same district and the board being satisfied as to the

moral character and professional attainments of the holders thereof. No certificate shall be issued to any person who is less than eighteen years of age; and if at any time the recipient of a certificate be found intemperate, immoral, incompetent, or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered; and before any hearing is had by a board of examiners on the question of the revocation of a teacher's certificate, the charges against the teacher shall be reduced to writing and placed upon the records of the board, and the teacher shall be notified in writing as to the nature of the charges and the time set for the hearing, such notice to be served either personally or at his residence, and the teacher shall be entitled to produce witnesses and defend himself; the examining board shall have power to send for witnesses and examine them on oath touching the matter under investigation, and said oath or affirmation may be administered by any member of the board of examiners. (97 v. 375.)

§ 303. [Nature of certificates to be granted; branches of study.] (§ 4082.) The provisions of section *forty hundred and seventy-four* (§ 295) of the Revised Statutes of Ohio relating to the kinds of certificates authorized to be issued by the country boards of school examiners for teachers in elementary schools and high schools, and for superintendents shall apply to city boards of school examiners; provided, that city boards of school examiners may, in their discretion, require teachers in elementary schools to be examined in drawing, music, or German if such subjects are a part of the regular work of such teachers. (97 v. 376.)

Section 295 (§ 4074).

§ 304. [Compensation of examiners; incidental expenses.] (§ 4083.) Each city board of education shall fix the compensation of the members of the city board of school examiners and the additional compensation of the clerk of the board, and the person or persons called to their assistance furnish the necessary books, blanks and stationery for their use, and designate a school building within the district in which they shall conduct examinations, and to cause such building to be lighted

and heated if necessary; and such compensation, and the incidental expenses incurred on account of the city board of school examiners, shall be paid, by order of the board of education, from the contingent fund of the district. (97 v. 376.)

The board may increase or diminish the compensation of an examiner at its will, such increase or diminishment not to act retroactively. *Ferry v. Board of Ed.*, 21 C. C., 785.

§ 305. [Records and reports; duties of the clerk; disposition of fees.] (§ 4084.) The clerk of the city board of school examiners shall keep a record of the proceedings of the board, and such statistics as the state commissioner of common schools may require, and in the form and manner he may require, and shall report such statistics to the commissioner annually, on or before the first day of September; he shall pay the examination fees received by him to the treasurer of the district within ten days after each meeting, and at the same time file with the clerk of the board of education a written statement of the amount, and also a statement of the number of applicants, male and female, examined, and the number of certificates granted, and for what terms; and the fees paid to the treasurer of the district shall be applied to the support of teachers' institutes, as provided in chapter thirteen. (97 v. 376.)

§ 306. [Applicants who fail may appeal to the state commissioner of common schools; method of procedure.] (§ 4085.) All manuscripts filed as answers to questions propounded to any applicant appearing before any county or city board of school examiners, shall be promptly considered and passed upon by said board together with the results of oral tests if any and such other information which may come to said board touching the fitness of any applicant for teaching in the public schools; and said board shall promptly issue all certificates granted to successful applicants and send notices of failure to those who fail in the examination, if such there be. All such manuscripts shall be kept on file for sixty days by the members of the examining board propounding the questions, and if within the sixty days any applicant after receiving his returns from the examination has cause to and does believe that he has been discriminated against and his manuscripts unfairly graded, it shall be his right to review

his manuscripts with the member or members of the board having the same in charge, and if after such inspection and review of the manuscripts, he is still of the opinion that said board will not correct the error, if any, and issue his certificate, he shall have the right to appeal his case to the state commissioner of common schools for final review. Such appeal shall be in the form of an affidavit setting forth the facts as he believes them, accompanied by a fee of one dollar to cover the expenses incident to said appeal, and requesting that the matter be inquired into; thereupon the said commissioner shall require the clerk of said board to procure and forward said manuscripts, together with a full explanation of the reasons for the board's action, and if upon his examination of all the facts, together with the manuscripts, he finds that said applicant was denied a certificate when he should have been granted one and has been discriminated against by the board, he shall order the board forthwith to issue a certificate of the date of the teachers' examination attended by said applicant and indicate the length of time said certificate shall be valid, but if upon inspection of the manuscripts and reviewing the facts submitted he shall conclude that no injustice has been done, he shall so notify the applicant and the clerk of the board of examiners. (97 v. 377.)

APPEALING TO STATE COMMISSIONER.—The above section specifically grants the right of any applicant to appeal from the decision of the county or city board of examiners. In order, however, to be entitled to such appeal he must strictly bring himself within the terms of the statute, that is, within sixty days after he has received the returns on his examination. He shall first call the county or city board's attention to such matter and have an inspection and review of the manuscripts. If he is still of the opinion that the board has wrongfully acted in his case he shall file an affidavit with the state school commissioner and set forth the facts as he believes them, accompanied by a fee of \$1.00 to cover expenses incident to the appeal. Having done this the state commissioner will re-examine the matter and will notify the applicant of the result. This affidavit need not be in any particular form; simply set out the facts as they appear to the person appealing.

CHAPTER 13.

TEACHERS' INSTITUTES.

SECTION.		SECTION.	
§ 307 (4086)	Organization of county teachers' institutes; election of officers; term; vacancies; duty of executive committee; bond; when election to be held.	§ 312 (4091)	Teachers may dismiss school to attend institute; compensation for time, when allowed.
§ 308 (4087)	Payment of institute fund to committee.	§ 313 (4092)	Institutes for city districts; number of days; payment of expenses; appropriation by board of education.
§ 309 (4088)	Report of secretary; his compensation.	§ 314 (4093)	Repealed.
§ 310 (4089)	Forfeiture of committee's bond.	§ 315 (4094)	Number of days institute must continue; reports.
§ 311 (4090)	When school commissioner may hold institute.		

§ 307. [Organization of county teachers' institute; elections, term, duties and bond of officers.] (§ 4086.) A teachers' institute may be organized in any county, by the association of not less than thirty practical teachers of the common schools residing therein, who shall declare their intention in writing to attend such institute, the purpose of which shall be the improvement of such teachers in their profession; such institute shall elect annually, by ballot, a president, secretary, and one member of an executive committee, said member of the executive committee to serve for a term of three years; provided, that at the first annual election held after the organization of any institute, there shall be elected three members of the executive committee, the one receiving the highest number of votes to serve for three years; the one receiving the next highest number of votes to serve for two years; and the one receiving the next highest number of votes to serve one year. The president and secretary of the institute shall be *ex officio* members of the executive committee and shall act as

chairman and secretary of said committee. Any vacancy in the office of president, secretary, or member of the executive committee caused by death, resignation, removal from the county or other cause, may be filled by the executive committee, the person elected to fill such vacancy to serve until the next annual meeting of the institute. It shall be the duty of this executive committee to manage the affairs of the institute; which committee shall enter into a bond, payable to the state of Ohio, with sufficient surety, to be approved by the county auditor in double the amount of the institute fund in the county treasury, for the benefit of the institute fund of the county, and conditioned that the committee shall account faithfully for the money which will come into its possession, and make the report to the commissioner of common schools, required by section *four thousand and eighty-eight* (§ 309), and such election of officers shall be held during the session of such institute and at time fixed by the executive committee thereof, of which election at least three days' notice shall be given the members of such institute by posting conspicuously in a room, where such institute is held, a notice of the time and place of holding such election and of the officers to be voted for at such election (95 v. 237; 92 v. 10; 84 v. 230; Rev. Stat. 1880; 70 v. 195, § 112.)

Upon a compliance with the statutory provisions of this chapter will depend the right of the institute to receive financial aid in its management.

Since the president and secretary of the institute are *ex officio* members of the executive committee, the other members of the committee alone can not lawfully organize the committee. The president of the institute is chairman of the committee and the secretary of the institute is secretary of the committee.

The purpose of a teachers' institute being the improvement of the teachers entitled to its privileges in their profession, it clearly follows that the instruction given therein should be mainly upon methods of teaching and the management of schools.

REQUESTS TO.—Sec. 20-1. The commissioners of the several counties of the state may receive bequests, donations and gifts of real and personal property and money to promote and advance the cause of education in their respective counties; a part may be used to defray the expenses of the teachers' institute, each year.

§ 308. [Payment of institute fund to committee.] (§ 4087.) The declaration and bond mentioned in section *forty hundred and eighty-six* (§ 307), shall be filed with the county auditor, whereupon the auditor shall give to the institute committee an order on the county treasurer for the amount of the institute fund in the treasury; and any portion of said fund not disbursed by the committee shall be returned to the county treasury, on the certificate of the county auditor. (70 v. 195, § 112; S. & S., 709.)

§ 309. [Report of secretary; his compensation.] (§ 4088.) The secretary shall, within five days after the adjournment of the institute, report to the state commissioner of common schools the number of teachers in attendance at the institute, the names of instructors and lecturers attending said institute, the amount of money received and disbursed by the committee and such other information relating to the institute as the commissioner may require; the secretary may be allowed compensation not to exceed ten dollars for making such report and for his services as secretary, to be paid out of the institute fund of the county, but no other compensation shall be allowed any officer or member of the executive committee; on failure to make such report, the secretary shall forfeit and pay to the state the sum of fifty dollars. (95 v. 238; 1888, April 11; 85 v. 192, 196; Rev. Stat. 1800; 70 v. 195, § 112; S. & S., 709.)

Blanks are furnished the auditor for this purpose.

§ 310. [Forfeiture of committee's bond.] (§ 4089.) Upon the forfeiture of the committee's bond, the prosecuting attorney of the county shall prosecute an action thereon, in the name of the state, and collect any money which the committee may have failed to disburse according to law, and any penalty to which the committee may be liable under this chapter, and pay the same into the county treasury to the credit of the institute fund. (70 v. 195, § 112.)

§ 311. [When school commissioner may hold institute.] (§ 4090.) When a teachers' institute has not been held within two years in any county, the commissioner of common schools

may hold or cause to be held therein such institute; and the management thereof and all proceedings in relation thereto, shall be the same as hereinbefore provided, except that the written declaration required shall not be necessary. (70 v. 195, § 114.)

§ 312 [Teachers may dismiss school to attend institute; compensation for time, when allowed.] (§ 4091.) All teachers of the public schools within any county in which a county institute is held may dismiss their schools for one week for the purpose of attending such institute, and when such institute is held while the schools are in session the boards of education of all school districts are required to pay the teachers of their respective districts their regular salary for the week they attend the institute upon the teachers presenting a certificate of full regular daily attendance at said institute signed by the president and secretary thereof; the same to be paid as an addition to the first month's salary after said institute by the board of education by which said teacher is then employed, or in case he is unemployed at the time of the institute, then by the board next employing said teacher, provided the term of said employment begins within three months after said institute closes. (97 v. 377.)

CONSTRUCTION OF THE ABOVE STATUTE.—There has been a difference of opinion among boards of education of the meaning of the above section, in reference to the payment of teachers who attend institutes.

The commissioner of schools interpreted this statute to mean that payment was required whether the institute was attended while the schools were in session or in times of vacation, and this opinion was affirmed by the written opinion of the Attorney-General. Recently the matter has come before the Supreme Court and that court has arrived at the same conclusion that the School Commissioner and Attorney-General hold to be the proper construction. *Beverstock v. Board of Education*, vol. 51, p. 563. Bull.

The court, in deciding this case, uses the following language, "Guided by these rules, we must determine, if possible, what the provision contained in the latter part of Section 4091 means. We think the task is not difficult of performance. In the first part, where the teachers dismiss their schools for one week and for the purpose of attending an institute, and they do attend such institute during that week, the boards of edu-

cation are required to pay the teachers their regular salary for the week upon presentation of the proper certificate of their attendance at the institute. In other words, the salaries continue during that week. Then it is said: 'The same to be paid as an addition to the first month's salary after said institute by the board of education by which said teacher is then employed, or, in case he is unemployed at the time of the institute, then by the board next employing said teacher, provided the term of said employment begins within three months after said institute closes.' 'The same to be paid'—that is, salary at the same rate, is to be paid for the institute week to the teachers who then are under employment for the ensuing year, that they will receive after service under such employment begins, and this rate of salary is to be paid as an addition to the first month's salary after the institute closes. Or, to put it in other words, the teacher shall be paid for the week spent at the institute on the basis of the salary agreed upon for teaching in the schools thereafter, and this shall be paid as an addition to the first month's salary earned after said institute.

"There can be no difficulty in ascertaining the amount to be paid in the present case, because the teachers, prior to the holding of the institute, had been employed for the ensuing school year, and, of course, the terms of compensation had been agreed upon. This being the evident purpose of the legislature, attempted to be expressed in the language quoted, there can be no difficulty in its enforcement. The same observation applies to the payment of the teachers for the institute week of 1904. The facts for that year are the same that pertain to 1905, for that was the first time the law became applicable in that district after its passage.

"The same construction of language will control cases where a teacher is not under employment at the time the institute is held. In his case, he is to be paid by the board next employing him after such institute closes. When he so becomes employed, his rate of compensation is fixed, and on presentation of the proper certificate, showing that he had attended the preceding institute for a week, his compensation for that week is ascertainable and his right to receive it complete, if his term of employment begins within three months after said institute closes.

"It seems the board of education, defendant in error, readily and easily comprehended this statute and was proceeding to comply with it, when a doubting Thomas appealed to the court to prevent it. We have nothing to do with the expediency of the law, but it is our duty to enforce it if it is susceptible of enforcement, and it certainly is. The motive and intent of the legislature is discernible in the language em-

ployed when the whole section is read and considered together, and it was to promote the thoroughness and efficiency of the teachers in our schools, and through them the successful advancement of the schools themselves.

It will be observed that the court, rightfully so, does not say anything about the expediency of the law, and to many persons a query has presented itself, Why should the state pay for educating a person to fill certain avocations in life? If the state should pay for educating a school teacher, why not pay for educating a lawyer, or doctor or civil engineer, or persons that have positions in the administration of the state, as governor, legislators, and persons of that kind, but this merely refers to its expediency.

In a recent report of the school commissioner, he recommends that this statute should be amended, so as to make a uniform amount to be paid to persons who attend the institute. It will be observed that the Supreme Court in the above case very clearly lays down the course to be pursued, and if the teacher is already employed he is merely entitled to a week's extra salary. If he is not now employed and becomes employed within three months after attending the institute he is entitled to a week's extra salary at the same rate he is employed to teach the school. I presume that there would be nothing to prevent a board of education, however, in making a contract whereby a teacher would waive his right to such extra week of institute work. Of course if no contract is made waiving such right, the teacher will be entitled to the same."

§ 313. [Institutes for city districts; number of days; payment of expenses; appropriation by board of education.] (§ 4092.) The board of education of each city school district may provide for holding an institute yearly, for the improvement of the teachers of the common schools therein; and general meetings of the teachers of any such city district held upon not less than four days in any year, whether consecutive days or not, for the purpose of instruction, shall be deemed to constitute a teachers' institute for said city district within the meaning of this section; the expenses of such institute shall be paid from the institute fund provided for by section *forty hundred and eighty-four* (§ 305); and in addition to this fund the board of education of any district may expend annually, for the instruction of the teachers of said district in an institute or in such other manner as it may prescribe, a sum not to exceed five hundred dollars, the same to be paid from

its contingent fund; if the board of any district do not provide for such institute in any year, it shall cause the institute fund in the hands of the district treasurer for the year to be paid to the treasurer of the county wherein the district is situated, who shall place the same to the credit of the county institute fund, and the teachers of the schools of such district shall be entitled, in such case, to the advantages of the county institute, subject to the provisions of the preceding section; and the clerk of board shall make the report of the institute required by section *forty hundred and ninety-four* (§ 315). (97 v. 378.)

§ 314. (§ 4093.) Repealed April 25, 1904.

§ 315. [Number of days institutes must continue; reports.] (§ 4094.) All institutes held under the provisions of this chapter shall continue at least four days; and a report of the institute held in pursuance of the provisions of section *forty hundred and ninety-two* (§ 313) shall be made to the state commissioner of common schools within five days after the adjournment thereof, which shall state the number of teachers in attendance, the names of the instructors and lecturers, the total expenses of the institute, and the portion thereof paid from institute funds, and such other information relating to the institute as the commissioner may require. (97 v. 378.)

CHAPTER 14.

POLICY TOWARDS SCHOOLS FOR WHICH STATE APPROPRIATIONS ARE MADE—STATE NORMAL SCHOOLS.

SECTION.		SECTION.	
§ 316 (1)	Declaration of policy of state with respect to Ohio state university, Ohio university and Miami university.	§ 320 (5)	Tax levy for support of normal school at Miami university.
		§ 321 (6)	How such money shall not be expended.
§ 317 (2)	Tax levy for support of Miami university.	§ 322 (7)	Tax levy for support of Ohio state university.
§ 318 (3)	Tax levy for support of Ohio university.	§ 323 (8)	Tuition.
		§ 324 (9)	Inspection of accounts.
§ 319 (4)	Tax levy for support of normal school at Ohio university.	§ 325 (10)	Repeals.
		§ 326 (4094-1)	State normal schools; location.
		§ 327 (4094-2)	Organization, control, instruction.

§ 316. [Declaration of policy of state with respect to Ohio state university, Ohio university and Miami university.] Sec. 1. Inasmuch as it is deemed desirable at this time for the state of Ohio to determine the policy of the state in regard to its support of institutions of higher learning, and further desirable that the state adopt a policy in regard to the support of universities and colleges to the end that there shall be a distinct and fixed policy in regard to universities and colleges and to the end that for all time to come the policy of the state with reference to the Ohio state university, the Miami university and the Ohio university may be determined and made definite and to the end that the state of Ohio may build up one university worthy of the state, as now begun at the Ohio state university, and at the same time to fix such a policy as shall provide for the support for the said Miami and the Ohio universities as colleges of liberal arts, which shall not include technical or graduate instruction, aside from the usual graduate work for the degree of master of arts and to deter-

mine definitely and for all time to come that the Miami university and the Ohio university shall be no greater charge on the state of Ohio so far as university purposes are concerned than provided for in this act, therefore this act is to set forth the policy, to wit: That in the future no representative of the Miami university or of the Ohio university or of the Ohio state university shall violate or attempt to violate this policy herein enacted into law as a policy for the support of higher education and as a guide for future general assemblies of the state of Ohio. (98 v. 309.)

§ 317. [Tax levy for support of Miami university.] Sec. 2. For the purpose of affording support to the Miami university, there shall be levied annually a tax on the grand list of the taxable property of the state of Ohio, which tax shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Miami university fund." The rate of such levy shall be two and one-half one-hundredths (.025) of one mill upon each dollar of valuation of such taxable property. The moneys raised by means of said levy, or its equivalent in money in case the levy shall be abolished, shall be the sum total received either from the proceeds of the levy or from appropriations for the support of the college of liberal arts, and shall be used for the purposes only as set forth in section 1 of this act, and hereafter this levy shall not be increased, but this shall not be so construed as to prevent such appropriations by the general assembly from time to time as may be necessary for apparatus for university purposes, exclusive of buildings. Provided that nothing herein shall invalidate any appropriation for the years 1906 and 1907. (98 v. 309.)

§ 318. [Tax levy for support of Ohio university.] Sec. 3. For the purpose of affording support to the Ohio university, there shall be levied annually a tax on the grand list of the taxable property of the state of Ohio which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Ohio university fund." The rate of such levy shall be two and one-half one-hundredths (.025) of one mill upon each dollar of valuation of such taxable property. The moneys raised by means of said levy, or its equivalent

lent in money, in case the levy shall be abolished, shall be the sum total received either from the proceeds of the levy or from appropriations for the support of the college of liberal arts, and shall be used for the purpose only as set forth in section 1 of this act, and hereafter this levy shall not be increased, but this shall not be so construed as to prevent such appropriations by the general assembly from time to time as may be necessary for apparatus for university purpose, exclusive of buildings. Provided that nothing herein shall invalidate any appropriation for the years 1906 and 1907. (98 v. 309.)

§ 319. [Tax levy for support of normal school at Ohio university.] Sec. 4. For the purpose of affording support to the state normal school or college, in connection with the Ohio university, there shall be levied annually a tax on the grand list of the taxable property of the state of Ohio, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Ohio normal school fund." The rate of such levy shall be one and one-half one-hundredths (.015) of one mill upon each dollar of valuation of such taxable property, unless otherwise designated by the general assembly of the state of Ohio; provided that nothing in this section shall be construed as preventing said normal school from securing such additional appropriations as the general assembly may in its wisdom deem fit to make from time to time for the support, maintenance and equipment of said normal school. (98 v. 309.)

§ 320. [Tax levy for support of normal school at Miami university.] Sec. 5. For the purpose of affording support to the state normal school or college, in connection with the Miami university, there shall be levied annually a tax on the grand list of the taxable property of the state of Ohio, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Miami normal school fund." The rate of such levy shall be one one-hundredth (.01) of one mill upon each dollar of valuation of such taxable property, unless otherwise designated by the general assembly of the state of Ohio; provided that nothing in this section shall be construed as preventing said normal school from securing such additional appropriations as .

the general assembly may in its wisdom deem fit to make from time to time for the support, maintenance and equipment of said normal school. (98 v. 309.)

§ 321. [How such money shall not be expended.] Sec. 6. No moneys derived under the levies provided for in sections 2, 3, 4 and 5 of this act shall be expended by the Miami university and by the Ohio university for maintaining or giving instructions in any other courses of study than in liberal arts and in the normal school or college branches. (98 v. 309.)

§ 322. [Tax levy for support of the Ohio state university.] Sec. 7. For the purpose of affording free the advantages to the youth of the state of a higher, technical, liberal, professional, agricultural, graduate and industrial education, including manual training, there shall be levied annually a tax on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute, "the Ohio state university fund." There shall be levied annually for the said purpose sixteen one-hundredths (.16) of one mill upon each dollar of valuation of such taxable property, or its equivalent in money should said levy be abolished; provided that nothing in this act shall be construed to prevent said Ohio state university from securing any appropriations that the general assembly in its wisdom may see fit to grant for the purposes as herein set forth. Provided, that the Ohio state university shall never maintain a normal school, but may establish a teachers' college or [of] professional grade; provided that nothing in this section shall prevent the board of trustees from charging incidental expense fees and also reasonable tuition fees for professional education. Any appropriations made by the 77th general assembly for Ohio state university shall not be invalidated by any provisions of this act. (98 v. 309.)

§ 323. [Tuition.] Sec. 8. Nothing in this act shall be construed as preventing the boards of trustees of the Ohio state university, the Miami university, the Ohio university or the state normal schools at the Ohio university or at the Miami university from charging reasonable tuition for the attendance of pupils of any of said institutions of learning from

students who are non-residents of the state of Ohio. (98 v. 309.)

§ 324. [**Inspection of accounts.**] Sec. 9. The expenditure of all moneys under the provisions of this act or for the purposes of carrying out the provisions of this act raised or secured from any source whatsoever shall be subject to the inspection of the state bureau of public accounting, the cost of same to be paid by the university or college inspected at the cost as now provided by law. (98 v. 309.)

§ 325. [**Repeals.**] Sec. 10. That sections 3951a and 3951b of the Revised Statutes of Ohio, and sections 3, 4, 5 and 6 of an act entitled, "An act to establish normal schools at Ohio university at Athens, and at Miami university, at Oxford, and to provide for the appointment of a commission to investigate and report upon the need and advisability of the future establishment by the state of one or more additional normal schools and to consider in what manner and to what extent existing educational institutions other than those now supported by the state can be made more active in the better training of persons for service in the public schools," passed March 12, 1902, be and the same are hereby repealed. (98 v. 309.)

§ 326. [**State normal schools; location.**] (4094-1) Sec 1. That there be and are hereby created and established two state normal schools to be located as follows: One in connection with the Ohio university, at Athens, and one in connection with the Miami university, at Oxford. (95 v. 45, March 12, 1902.)

§ 327. [**Organization, control and instruction.**] (4094-2) Sec. 2. The boards of trustees of said universities shall, not later than September, 1903, organize at their respective institutions a normal school which shall be co-ordinate with existing courses of instruction, and shall be maintained in such a state of efficiency as to provide proper theoretical and practical training for all students desiring to prepare themselves for the work of teaching; said normal schools, in each case, being under the general charge and management of the respective boards of trustees of said universities. (95 v. 45, March 12, 1902.)

CHAPTER 15.

COLLEGES AND INSTITUTIONS OF LEARNING.

SECTION.		SECTION.	
§ 328 (3726)	Certain corporations may appoint a faculty and confer degrees.	§ 353 (3751)	How certain boards may be constituted and governed.
§ 329 (3727)	May hold donated property in trust.	§ 354 (3751a)	Increase in number of trustees of certain corporations.
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SECTION.		SECTION.	
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§ 370 (3763)	Under what restrictions medical colleges and teachers may re-	§ 380 (3771)	Attorney general may, by action, enforce duties of officers.
		§ 381 (3771a)	How number of trustees of certain colleges increased.

§ 328. [Certain corporations may appoint a faculty and confer degrees.] (§ 3726.) The trustees of a college, university, or other institution of learning, incorporated for the purpose of promoting education, religion, morality or the fine arts, which has acquired real or personal property to the value of five thousand dollars, and which has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of the trustees, may appoint a president, professors and tutors, and any other necessary

agents and officers, and fix the compensation of each, and may enact such by-laws, not inconsistent with the laws of this state or of the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary; and may, on the recommendation of the faculty, confer all such degrees and honors as are conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishment of the student, as they may deem proper. (50 v. 128, § 1 51 v. 403, §§ 2, 3; S. & C. 266, 270.)

§ 329. [May hold donated property in trust.] (§ 3727.)
Any universtiy, college, or academy, or the trustees thereof, may hold in trust any property devised, bequeathed, or donated to such institution, upon any specific trust consistent with the objects of the corporation. (50 v. 128, § 5; S. & C. 267.)

§ 330. [Who constitute the faculty; its powers.] (§ 3278.)
The president and professors shall constitute the faculty of any incorporated literary college or university, and may enforce the rules and regulations enacted by its trustees for the government and discipline of the students, and suspend and expel offenders, as may be deemed necessary. (50 v. 128. § 6; S. & C. 267.)

§ 331. [May teach mechanics and agriculture.] (§ 3729.)
Any incorporated university, college, or academy may connect therewith, to be used as a part of its course of education, any mechanical shops and machinery, or lands for agricultural purposes not exceeding three hundred acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural operations of such institution. (50 v. 128, § 8; S. & C. 267.)

§ 332. [May change stock into scholarships.] (§ 3730.)
Any company formed in pursuance of this title, or which now exists by virtue of any special act of incorporation, the property of which is held as stock, and not derived by donation, gift, devise or gratuitous subscription, may change its capital stock into scholarships, when it becomes necessary for the purpose of carrying out the object for which it was formed, in

the manner provided in section *thirty-two hundred and sixty-two*. (50 v. 128, §§ 9, 10; S. & C. 268.)

§ 333. [Location may be changed and how.] (§ 3731.)

A college, university, or other institution of learning, now existing by virtue of any act of incorporation, or that may hereafter become incorporated for any of the purposes specified in this chapter, may, if three-fourths of the trustees or directors thereof deem the same proper, or if the institution is owned in shares, or by stock subscribed or taken, by a vote of the holders of three-fourths of the stock or shares, change the location of such institution, convey its real estate, and transfer the effects thereof, and invest the same at the place to which such institution may be removed; but no removal shall be ordered, and no vote taken thereon, until after publication in the manner provided in the last section, in which notice shall be fully set forth the place to which it is proposed to remove such institution, and, in case of removal, a copy of the proceedings of such meeting shall be filed with the secretary of state. (52 v. 77, § 12; S. & C. 268.)

§ 334. [When and how college endowment fund diverted.]

(§ 3732.) The trustees of a corporation incorporated for the purpose of creating, holding, and managing a college endowment fund, the articles of incorporation of which provide that the fund may be applied to any object not inconsistent with the purposes of education different from that particularly specified therein, may apply to the court of common pleas in the county where the corporation is located for permission to make such change, designating particularly the purposes to which it is proposed to apply the funds; and the court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of the fund, shall authorize and sanction the change. (51 v. 393; § 2; S. & C. 269.)

§ 335.. [How vacancies in boards filled in certain cases.]

(§ 3733.) Whenever there occurs a vacancy, in whole or in part, in the board of trustees of an incorporated college, seminary, or academy, by reason of an amendment of the charter in such corporation, or from any other cause, and there is no

provision of law for filling such vacancy, the governor shall, within three months after receiving information thereof, appoint the required number of trustees, one-third thereof to serve for one year, one-third to serve for two years, and one-third for three years. (75 v. 25, § 2.)

§ 336. [Certain corporations may increase their property; bonds.] (§ 3734.) A college, university, academy, seminary, or other institution devoted to the promotion of education, now existing by virtue of any special act of incorporation, or organized under the provisions of any law, whose property is derived and held by donation, gift, purchase, devise or gratuitous subscription, and the amount of which, or the income arising therefrom, is limited by such special act, or by the articles of association adopted by such institution, may receive, acquire, possess and hold hereafter any amount of property, real, personal or mixed, which its board of directors or trustees shall deem it advisable for the institution to accept, and may, by its trustees, sell, dispose of and convey the same, but such property shall not be diverted from the express will of the donor, deviser or subscriber. The board of trustees of any such college, university, academy, seminary, or other institution devoted to the promotion of education, in anticipation of donations to be received and collections to be made, may, for the purpose of constructing, enlarging or adding to any college buildings or improvements, borrow such sum of money as they may determine necessary for such purpose, and may issue bonds therefor and secure the same by mortgage upon the property upon which such improvement is to be made, provided such property is not held by them under some specific trust. (90 v. 71; 53 v. 170, § 1; S. & C., 368.)

§ 337. [Statement to be made and filed.] (§ 3735.) Before any such institution shall be authorized to acquire and hold such additional property, the trustees thereof, at a regular meeting of their board, or at a special meeting called for that purpose, shall, from time to time, make and sign a statement specifying the amount of such additional property which they seek to acquire and hold, and shall set forth therein the purposes to which it is to be devoted, which statements shall be entered at large, upon the record book of the trustees and

be filed in the office of the secretary of state. (90 v. 72; 53 v. 170, § 2; S. & C., 368.)

§ 338. [How certain boards may be constituted and governed.] (§ 3736.) The board of trustees of any university or college heretofore incorporated, and now under the patronage of four or more conferences or other religious bodies of any religious denomination, may accept the provisions of this and the nine succeeding sections, by resolution adopted at any regular meeting of the board and entered upon the record of its proceedings; and after such acceptance the board shall in all respects be organized, constituted, regulated, and perpetuated, pursuant to and under said provisions; but no right acquired by any such board, or any such university or college under its charter, or any law of this state, shall in any way, be affected by said provisions. (65 v. 188, § 1; S. & S., 106.)

§ 339. [Trustees to be divided into classes.] (§ 3737.) At a meeting of such board held after a vacancy occurs therein it shall fill such vacancy, or if more than one vacancy has occurred, then one of them, by appointing the president of the university or college a trustee, and the president of such university or college shall, *ex officio*, be a trustee perpetually thereafter; the board shall also, at such meeting, divide its number, excluding the said president, and including all vacancies except the one he is so appointed to fill, into classes, corresponding in number to the number of conferences or other religious bodies at the time patronizing such university or college, such classes to have in each an equal number of trustees, as near as may be; and the board shall assign one of such classes to each of the conferences or other religious bodies, and thereafter each may fill any and all vacancies in the class so assigned to it. (65 v. 188, § 2; S. & S., 106.)

§ 340. [Term of office of trustees; how vacancies filled.] (§ 3738.) When the classes of trustees are formed, as provided in the preceding section, the term of office of one of the trustees in each of the classes, to be selected by lot in open session of the board of trustees, shall expire each year, and the persons thereafter elected as trustees, shall act as such for a term of years equal in number to the number of

trustees in any class, except as hereinafter provided; but the term of office of a trustee shall not expire during any meeting of the board which does not continue for more than two weeks; and vacancies which occur in any class of trustees otherwise than by the expiration of term of office shall be filled only for the remainder of the term. (65 v. 188, § 3; 70 v. 157, § 1; S. & S., 107.)

§ 341. [When the board is to be enlarged.] (§ 3739.) If the number of the conferences or other religious bodies patronizing any such university or college, the board of trustees of which has been divided into classes as hereinbefore provided, be increased to not exceeding six, the board of trustees shall be enlarged to the extent of one additional class of trustees for each of such additional conferences or other religious bodies, such additional classes to have in each a number of trustees equal to the number in any one of the former classes; and each of such additional conferences or other religious bodies may elect, as members of the board, the number in its class, one for one year, one for two years and one for three years, and so on to the extent of the number; and each of such additional conferences or other religious bodies may fill any vacancy in its class. And such board of trustees composed according to the foregoing provisions and the provisions of section *thirty-seven hundred and forty-seven* (§ 349) of this chapter, without regard to the number of members so composing it, may increase its own numbers by the election of trustees at large, not exceeding the number of conferences or other religious bodies co-operating with or patronizing such university or college, and may divide such trustees at large into classes, at its discretion. (89 v. 119; 65 v. 188, § 4; S. & S., 107.)

§ 342. [When the number in a class is to be reduced.] (§ 3740.) If the number of such patronizing conferences or other religious bodies at any time exceeds six, the representation of each shall be reduced by lot, in open session of the board of trustees, to a class of three trustees, if they exceed that number, who shall thereafter be elected to serve as trustees for the term of six years, and in that case the term of office of one trustee in each class shall expire every second year. (65 v. 188, § 5; S. & S., 107.)

§ 343. [A conference may become a patron by consent of other bodies.] (§ 3741.) Any conference or other religious body, not patronizing any particular university or college, may become such patronizing conference or religious body, by and with the consent of the conferences or other religious bodies at the time patronizing such university or college. (65 v. 188, § 6; S. & S., 107.)

§ 344. [Patronizing bodies may appoint visitors.] (§ 3742.) Each conference or other religious body patronizing any particular university or college may, annually, appoint two visitors, and the board of trustees of a college or university may provide, at the time of its organization, by resolution adopted and entered on its records, for the appointment of two visitors by each conference or other religious body patronizing such college or university; and such visitors shall attend the meetings of the board of trustees of such university or college, and, with the trustees, constitute a joint board for the appointment and removal of all officers, professors, and instructors of the university or college. (73 v. 163, § 7; S. & S., 107.)

§ 345. [When the right to representation shall cease.] (§ 3743.) If a conference or other religious body patronizing any university or college, and having a representation in its board of trustees, cease to exist, or cease to patronize such university or college, the right of such conference or other religious body to such representation shall cease, and its board of trustees shall be thereby and to that extent reduced in numbers. (65 v. 188, § 8; 73 v. 163; S. & S., 107.)

§ 346. [What action the board must first take.] (§ 3744.) Before a conference or other religious body not represented in the board of trustees of any university or college shall be entitled to be represented therein, and before any conference or other religious body represented therein shall be deprived of such representation as provided in the preceding section, the board shall declare, and cause to be entered in the record of its proceedings, that the conditions and contingencies hereinbefore for in that behalf shall have taken place. (65 v. 188, § 9; S. & S., 107.)

§ 347. [**Quorum; how constituted.**] (§ 3745.) Eleven trustees shall constitute a quorum of the board of any such university or college, whatever the number of trustees constituting the board is or may become, if the number is more than twenty; and if the number is twenty or less, a majority thereof shall constitute a quorum. (65 v. 188, § 10; S. & S., 108.)

§ 348. [**Certain corporations may have benefit of subsequent provisions.**] (§ 3746.) The board of trustees of any university or college which has accepted or hereafter accepts the provisions of the ten preceding sections, may accept the provisions of the three succeeding sections by resolution adopted at any regular meeting of the board, and entered upon the record of its proceedings, and thereafter the board, and the university or college, shall be subject to (the) provisions thereof. (69 v. 71, § 1.)

§ 349. [**Alumni may elect trustees and appoint visitors.**] (§ 3747.) After such acceptance by the board of any university or college, the alumni thereof (composing the alumnaal association thereof) may elect as members of the board of trustees of such college or university members of such alumnaal association, in numbers equaling the numbers of the conferences co-operating with or patronizing such university or college, and may divide such alumnaal trustees into classes, and perpetuate the same; and such alumnaal may, at the same time elect as visitors members of their association equaling in numbers one-half of the numbers of the conferences or other religious bodies co-operating with or patronizing such university or college, and such visitors shall have the same powers and duties as visitors appointed by any conference or other religious body aforesaid; provided, that when women are members of the alumnaal association so electing, they shall be eligible as visitors; provided, further, that the board of trustees shall be judge of the validity of the election and the returns thereof, of trustees and visitors elected under this section. (89 v. 120; 81 v. 174; Rev. Stat. 1880; 69 v. 71, § 2; 76 v. 87, § 1.)

§ 350. [**Conduct of elections.**] (§ 3748.) The election of trustees and visitors by the alumni shall be by ballot, and held each year, beginning the year after such acceptance, on the

secular day next before the day of commencement of such university or college, at such place in a building on its grounds as may be designated by the president of the alumna association by written notice posted the day before the election in at least two public places on such grounds; and the polls shall be opened at the hour named in said notice, which shall not be later than three o'clock p. m., and shall be kept open for two hours thereafter. The election shall be conducted by three judges and two clerks, who shall be members of said association and be chosen by the members present at the place of voting at the time for opening the polls, and they shall certify to the board of trustees the result of such election, with a list of the members voting thereat; each ballot shall contain the names of the persons voted for, the office which each is to fill and a designation of the term for which he is to serve. At such election all members of the alumna association of such university or college shall be entitled to vote, and members not in attendance may exercise their right by sending ballots conformable to the foregoing provisions, with their names thereon endorsed, and addressed under seal to the president of such association. (89 v. 120; 69 v. 71, § 3.)

§ 351. [Returns of the election, and certificates.] (§ 3749.)

After the polls are closed the result shall be ascertained and certified to by the judges and clerks, and the person or persons, not exceeding the number to be elected as trustees, having received the highest number of votes for trustee or trustees, shall be declared elected trustee or trustees as designated on the ballot, and the two persons who receive the highest number of votes for visitors shall be declared elected, but their terms of office shall not begin until after the final adjournment of the regular meeting of the trustees for that year; if any two or more persons receive an equal number of votes for the same office of trustee or visitor, one of them, as may be determined by lot by the judges, in the presence of all the electors who may wish to be present, shall be the trustee or visitor, and shall be so declared; and duplicate certificates of election shall be signed by the judges and clerks, and delivered by them, one to each of the persons elected, and the other, with the poll books duly certified by the judges and clerks, to the secretary of the board of trustees of the universi-

ty or college, the next day after the election, which certificate he shall enter of record in the book containing the proceedings of the board of trustees. (69 v. 71, § 3.)

§ 352. [Endowment fund corporations.] (§ 3750.) The trustees of a corporation incorporated for the purpose of creating a fund, the income of which is to be applied to the promotion of education, may receive subscriptions for membership in the corporation, and they, or a majority of them, by giving ten days' notice, by publication in the county where the corporation is located, may call a meeting of members to adopt by-laws, and elect not more than nine directors; each member shall have a vote for every amount by him subscribed equal to that in the articles of incorporation specified as necessary for membership, which may be cast in person or by proxy, but at no subsequent meeting may a member vote for or be eligible as a director who is in arrears to the corporation; and the trustees shall control the funds and disburse the income of the corporation as may be provided by its by-laws. (69 v. 173, §§ 1, 2, 3, 4, 5.)

§ 353. [How certain board may be constituted and governed.] (§ 3751.) The board of trustees of any university, college, or other institution of learning, incorporated, and acting under the patronage of one annual conference or other religious body of any religious denomination, may accept the provisions of this and the succeeding section, by resolution adopted at any meeting of the board, and entered upon the record or journal of its proceedings; and after such acceptance the board shall be organized, constituted, regulated, and perpetuated as therein provided; but no right acquired by any such board, university, or other institution of learning, under its charter, or any law of this state, shall in any way be impaired or affected thereby. (69 v. 180, § 1.)

§ 354. [Increase in number of trustees of certain corporations.] (§ 3751a.) The board of trustees of any university or college, heretofore incorporated, and now under the patronage of one annual conference or synod or other religious body of any religious denomination, may increase the number of its trustees, not exceeding six; said additional trustees to be nominated by the collegiate alumni of three years' standing,

for appointment or election by such patronizing conference or synod, under such regulations as may be prescribed by such board of trustees; provided, that the board of trustees of such university or college shall so determine to increase the number of its trustees and adopt such regulations for their nomination, by resolution adopted at any regular meeting of such board, and duly entered on the record of its proceedings; and, provided further, that such patronizing or governing conference or synod shall consent to such increase of said board of trustees and the rules and regulations for the nomination of the same. And after such board of trustees is so increased by the election of any additional trustees, not exceeding six, the board of trustees shall in all respects be organized, constituted, regulated and perpetuated pursuant to and under the provisions of the charter and said provisions; but no rights acquired by any such board or any such university or college, under its charter or any law of this state, shall in any way be affected or impaired thereby. (91 v. 155.)

§ 355. [Incorporation of colleges under ecclesiastical patronage; what articles shall contain.] (§ 3751b.) A corporation may be formed for the promotion of academic, collegiate or university education, under religious influences, and is hereby authorized and empowered to set forth in its articles, or certificate of corporation, as a part of the same, the name of the religious sect, association or denomination with which it proposes to be connected, and it is further authorized and empowered to grant any ecclesiastical body of such religious sect, association or denomination, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, the right to appoint its trustees or directors, or any number thereof; and it is further authorized and empowered to set forth in its articles or certificate of corporation, such other rights as to the administration of the purpose for which it is organized, and not inconsistent with the laws of this state or of the United States, as said incorporation may desire to confer upon said ecclesiastical body of such religious sect, association or denomination and the said ecclesiastical body of such religious sect, association or denomination shall possess and exercise all rights and powers to set forth in said articles or certificate of corporation. (94 v. 331.)

§ 356. [Existing corporations may avail themselves of provisions of act; how.] (§ 3751c.) Any corporation formed for the promotion of academic, collegiate or university education, under religious influences, which has been incorporated under the laws of this state, whether by special act of the legislature or otherwise, may avail itself of the provisions of the preceding section, as a part of its articles or certificate of incorporation, and may confer on any ecclesiastical body of such religious sect, association or denomination, as it is now, or proposes to be connected with, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, any or all the rights, powers or privileges provided by the preceding section to be conferred on corporations hereafter organized, and may accept the provisions of such preceding section by a vote of the majority of the trustees of such corporation at any regular meeting; and when so accepted, a copy of said acceptance, certified by the secretary or clerk of its board of trustees or directors, shall be sent to the ecclesiastical body with which it is now or proposes to be connected; if such ecclesiastical body agree to accept the powers proposed to be conferred upon it, it shall certify its approval upon such certified copy sent to it, and the same shall thereupon be filed in the office of the secretary of state; and, when so filed, the same shall become and be a part of the charter of said corporation; and said ecclesiastical body of such religious sect, association or denomination, whether the same be a conference, association, presbytery, synod, general assembly, convocation or otherwise, shall possess and exercise all the rights and powers so set forth in said articles or certificate of corporation. (94 v. 331.)

§ 357. [Classes and election of trustees; president *ex officio* a member of the board; term; vacancies; increase in board.] (§ 3752.) After such acceptance the board shall certify the same to the patronizing conference or other religious body having the right to elect or appoint trustees of such university or other institution of learning, at the next meeting of such conference or other religious body; and thereafter the board shall consist of twenty-one trustees elected or appointed, and the president of such university or other institution of learning, who shall be *ex officio* a member of the board; such elected

or appointed trustees shall be divided into three classes of seven members each. At the first election or appointment after such acceptance, one of such classes shall be elected or appointed for one year, one for two years and one for three years, and in all subsequent elections or appointments each of the classes of trustees shall be elected or appointed for three years, but no term of office of any such trustee shall expire during any meeting of the board which does not continue more than two weeks. Ten members of the board shall constitute a quorum, and all vacancies which occur in any class of trustees otherwise than by expiration of the term of office, shall be filled only for the remainder of the term; provided, that any such university or other institution of learning, having heretofore accepted the provisions of original sections 3751 (§ 353) and 3752 (§ 357), may increase its board of trustees by electing or appointing two additional members in each of the classes of trustees herein provided for. (1888, March 30; 85 v. 140, 141; Rev. Stat. 1880; 69 v. 180, §§ 2, 3; 70 v. 157, § 1.)

§ 358. [Assessments may be made against stockholders.] (§ 3753.) The proportion that each stockholder of any college, academy, university, seminary, or other institution for the promotion of education, shall be required to pay to meet the debts and liabilities of the corporation, may be determined and collected in the manner provided by the three succeeding sections. (58 v. 20, § 1; S. & S., 108.)

§ 359. [Meeting of the stockholders, and notice thereof.] (§ 3754.) The trustees of any such corporation desiring to avail themselves of such provisions shall call a meeting of the stockholders for the purpose of determining what amount of the indebtedness of the corporation shall be paid by each stockholder; and they shall give thirty days' notice to the stockholders, in writing, or by publication in some newspaper of general circulation in the county where the corporation is located, of the time, place, and purpose of the meeting, at which the trustees shall submit a detailed statement showing the assets and indebtedness of the corporation. (58 v. 20, §§ 2, 3; S. & S., 108.)

§ 360. [Meeting may fix amount of assessment.] (§ 3755.) A majority in interest of the stockholders present at such meet-

ing may determine what amount of the indebtedness of the corporation shall be paid by each stockholder, and fix the time or times, and the mode, for the payment of the amount of money assessed against each stockholder; but these provisions shall not interfere with or abridge the right of any creditor of the corporation to institute any proceedings authorized by law to enforce the liability of stockholders. (58 v. 20, § 4; S. & S., 108.)

§ 361. [**How much may be assessed, and collection thereof.**] (§ 3756.) The assessments shall be pro rata upon the stock subscribed or otherwise acquired by each stockholder, and in no case shall exceed the amount for which each stock holder is or may be liable by law; and a stockholder who fails to pay, as required by the assessment, the amount so assessed against him, shall be liable in a civil action, to be brought in the name of the corporation, for the recovery thereof, as in other cases of indebtedness. (58 v. 20, §§ 5, 6; S. & S., 108, 109.)

§ 362. [**The board of military academies; how constituted, etc.**] (§ 3757.) The academic board of an institution incorporated for military and polytechnical education shall consist of the superintendent of the institution, the commandant of cadets, and the professors, and may make and enforce rules and regulations for the government of cadets; but such rules and regulations must be first submitted to and approved by the governor of the state. (64 v. 239, §§ 1, 2; S. & S., 109.)

§ 363. [**Board of visitors; how constituted.**] (§ 3758.) The board of visitors of such institution shall consist of the governor who shall be *ex officio* a member and the president of the board, of two other persons to be named by the governor, and such other persons as the superintendent of the institution may appoint. (64 v. 239, § 3; S. & S., 110.)

§ 364. [**Duties of board of visitors.**] (§ 3759.) The board of visitors shall meet annually at the institution, on the first day of the annual commencement exercises, and examine into the condition of the classes, quarters, and commons, and the discipline, drill, records of standing in study, and conduct of the cadets, and shall report on same to the legislature at its next

annual session; but the board of visitors, or any member thereof, may visit and inspect the institution at any time. (64 v. 239, § 4; S. & S., 110.)

§ 365. [How the term of office of trustees and visitors may be fixed.] (§ 3760.) At a regular meeting for the election of directors or trustees of any college or other institution of learning, the authorized voters may determine, by vote, whether the election of directors or trustees shall be held annually, if the term of their election is for a longer period than one year, and also what proportion of the entire board shall be elected annually; at the first election held under the provisions of this section the voters shall designate upon their ballots who shall serve for one year, who for two years, and who for three years; and vacancies caused by expiration of term of office shall be filled by election annually thereafter. (70 v. 125, § 1.)

§ 366. [Certain corporations may change location.] (§ 3761.) The trustees of colleges and other institutions of learning not endowed by voluntary contributions, which have been established under special acts of incorporation, and which by the provisions of such acts are located at particular places, may change the location thereof to such other places as they may deem proper, and erect and maintain academies and other schools auxiliary thereto. (70 v. 248, § 1.)

§ 367. [Sale and distribution of the property of certain corporations.] (§ 3762.) The trustees of any university, college, or other institution of learning, incorporated by the authority of this state under special charter, owned in shares or stock subscribed or taken, may dispose of its property at public sale, upon such terms as to payment as the stockholders thereof, by a vote of three-fourths of the shares or stock of the institution, may direct, after giving public notice of the same, by publication, for six consecutive weeks in some newspaper published in the county where the institution is located, if one is published therein, and if not, then in some newspaper published in this state, and of general circulation in such county, which notice shall contain a full statement of the terms, time, and place of sale, and the action of the trustees as aforesaid;

and the trustees may close up the corporate existence of such institution, and make an equitable division and distribution of the proceeds of the sale among all the holders of shares or stock, after the payment of the just debts of the corporation. (67 v. 24, § 1.)

§ 368. [Certain colleges, whose articles of incorporation are not on file in the office of the secretary of state, may file same there and amend.] (§ 3762a.) The trustees of any university, college or institution of learning, incorporated by the authority of this state, or under the general corporation laws thereof, owned in shares of stock subscribed and paid up in full, by a majority of the owners of such stock, for the sole purpose of promoting education, religion and morality, or the fine arts, exclusively among males or females, may, on the written petition of the owners of the majority of such stock filed before them, or on the vote of the owners of the majority of such shares of paid up stock at any general meeting of the stockholders called for such purpose, after thirty days' notice published in some newspaper published of general circulation in the county, by the board of trustees, may change the name and enlarge the purposes and objects of any such university, college or institution, by amendments to its charter, approved by the owners of the majority of such stock for the change of the name and the enlargement of the purpose and object of such university, college or institution of learning, so that all the educational rights and privileges thereof may be bestowed in the co-equal and co-ordinate education of both sexes. When such amendment is adopted and the original articles of incorporation of said corporation have not been filed and recorded in the office of the secretary of state, a copy of such amendment and copy of the original articles of incorporation of said corporation, with a certificate to each of them thereto affixed, signed by the president and secretary of said corporation, and sealed with the corporate seal, if any there be, stating the fact and date of the adoption of such amendment, and that such copy of said amendment, and that such copy of said original articles of incorporation of said corporation are and is a true copy of the originals, shall be recorded in the office of the secretary of state, and when so recorded, and not until then, said amendment shall become and be in law the

sole articles of incorporation of said corporation; and all the property, real and personal and the title thereunto, and all the rights and credits, shares of stock, and rights of stockholders, corporate franchises, and all endowment fund or funds, or gift or bequest, or legacies or mortgage securities and promissory notes, and rights of every kind belonging to, vested in or claimed, or possessed by the said original corporation, shall by said amendment pass to, be assigned and transferred and vested in and held, enjoyed and exercised by the said corporation named, created and organized by said amendment for the promotion of all the objects and purposes of its creation and organization. For recording such amendments and copies of such original articles of incorporation, and for furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. (1888, April 14; 85 v. 270.)

§ 369. [**Colleges may change name and purpose, when; procedure; fees.**] (§ 3762*b*.) That the board of trustees of any university, college or institution of learning, incorporated by the authority of this state, or under the general corporation laws thereof, for the sole purposes of promoting education, religion and morality, or the fine arts, may, at any regular or special meeting of such board of trustees, called for such purpose, after thirty days' actual notice to each and all of such trustees, change the name and enlarge the purposes and objects of any such university, college or institution of learning, by amendment to its charter, approved by a majority of such board of trustees at such regular or special meeting, so called and so notified, for the change of such name and the enlargement of the purposes and objects of such university, college or institution of learning. When such amendment is so adopted by the board of trustees of any university, college or institution of learning, already incorporated by the authority of this state, or under the general corporation laws thereof, a copy thereof, with a certificate thereto affixed, signed by the president and secretary of such board of trustees, and sealed with the corporate seal, if any there be, stating the fact and date of such amendment, and that such copy is a true copy of the original amendment, shall be filed and

recorded in the office of the secretary of state, and when so filed and recorded, and not until then, said amendment shall become and be in law an integral part of the articles of incorporation of said corporation, and all the property, real and personal, the title thereto, and all the rights and credits, corporate powers and franchises, and all endowment fund or funds, gifts and bequests, legacies, mortgage securities and promissory notes, and all powers, rights and privileges of every kind belonging to, vested in, claimed or possessed by said original corporation shall, by said amendment, pass to, be assigned, transferred and vested in, and held, enjoyed and exercised by the said corporation, named, created and organized by said amendment for the promotion of all the objects of its creation and organization. And said new corporation shall be liable for and perform all the lawful obligations, contracts and undertakings of said original corporation. For recording such amendment and furnishing a certified copy or copies thereof, the secretary of state shall receive a fee of twenty cents per hundred words, to be in no case less than five dollars. (87 v. 8.)

§ 370. [Restrictions under which medical colleges and teachers may receive bodies for dissection.] (§ 3763.) All superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, shall, before burial, hold such bodies not less than thirty-six hours and shall notify the professor of anatomy in any college which by its charter is empowered to teach anatomy, or the president of any county medical society of the fact that such bodies are being so held and shall, before or after burial, by such said superintendent, director, or other officer, on the written application of the professor of anatomy, the president of any county medical society, deliver to such said professor, or president, for the purpose of medical or surgical study or dissection, the body of any person who has died in either of said institutions from any

disease, not infectious, if such body has not been requested for interment by any person at his own expense;

[**Body to be delivered to claimant.**] If the body of any deceased person so delivered, be subsequently claimed, in writing, by any relative or other person for private interment, at his own expense, it shall be given up to such claimant;

[**Interment of body after examination or dissection.**] After such bodies shall have been subjected to such medical or surgical examination or dissection, the remains thereof shall be interred in some suitable place at the expense of the party or parties in whose keeping said corpse has been placed.

[**Notification to relatives of deceased person.**] In all cases it shall be the duty of the officer having such body under his control to notify or cause to be notified, in writing, the relatives or friends of such deceased person;

[**Penalty for refusal to deliver body, or acceptance of consideration for same.**] And any superintendent, coroner, or infirmary director, sheriff, or township trustee, failing or refusing to deliver such bodies when applied for, as herein provided, or who shall charge, receive, or accept money, or other valuable consideration for the same, shall be fined in any sum not exceeding one hundred dollars, and not less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months; provided, however, that in no case shall the body of any such deceased person be delivered until twenty-four hours after death.

[**Body of stranger or traveler.**] The bodies of strangers or travelers, who die in any of the institutions herein named, shall not be delivered for the purpose of dissection, except said stranger or traveler belong to that class commonly known as tramps; and all bodies delivered as herein provided shall be used for medical, surgical and anatomical study only, and within this state.

[**Unlawful to have unauthorized body in possession; penalty.**] And the possession of the body of any deceased person for the above purposes, and not authorized under this section, shall be unlawful, and the detention of the body of any deceased person, claimed by relatives or friends for the interment at their expense, shall also be unlawful, and the person so detaining said body unlawfully, shall be fined in any sum not

exceeding one hundred dollars, nor less than twenty-five dollars, or be imprisoned in the county jail not exceeding six months. (93 v. 84; 78 v. 33; Rev. Stat. 1880; 67 v. 25, § 1.)

§ 371. [Penalty for having unlawful possession of corpse.] (§ 3764.) Any person, association, or company, having unlawful possession of the body of any deceased person shall be jointly and severally liable with any and all other persons, associations, and companies that had or have had unlawful possession of such corpse in any sum not less than five hundred dollars and not more than five thousand dollars, to be recovered at the suit of the personal representative of the deceased in any court of competent jurisdiction, for the benefit of the next of kin of deceased.

§§ 372, 373 (§§ 3765, 3766). Repealed 1880, March 26; 77 v. 85.

§ 374. [Organic rules which may be prescribed in certain articles of incorporation.] (§ 3767.) An association incorporated for the purpose of receiving gifts, devises or trust funds to erect, establish, or maintain an academy in any department of fine arts or a gallery for the exhibition of paintings or sculpture or works of art, or a museum of natural or other curiosities, or specimens of art or nature promotive of knowledge, or a law or other library, or courses of lectures upon science, art, philosophy, natural history, or law, and to open the same to the public on reasonable terms, or an industrial training school, or a mechanics' institute for advancing the best interest (s) of mechanics, manufacturers and artisans, by the more general diffusion of useful knowledge in those classes of the community, or homes for indigent and aged widows and unmarried women and whose directors or trustees may be either sex, may in its articles of incorporation prescribe the tenure of office of the trustees or directors, the made of appointing or electing successors, the administration and management of the property, and trust and other funds of the corporation, and such other organic rules as may be deemed expedient or acceptable to donors which shall be and remain the permanent organic law of the corporation. (1887, February 21; 84 v. 31; 83 v. 40; Rev. Stat. 1880; 75 v. 135; §§ 1, 3.)

§ 375. [May add to the objects of the corporation; acceptance of statutory provisions.] (§ 3768.) Such corporations may by certificate, duly acknowledged by the trustees or directors, and filed in the office of the secretary of state, add to the original objects and purposes of the corporation any of the several objects and purposes, mentioned in the preceding section which were not provided for by the articles of incorporation, and in any such corporation heretofore incorporated under the laws of the state may by certificate, reciting the organic rules adopted by such corporation as its permanent organic law, and duly acknowledged by the trustees or directors, and lodged in the office of the secretary of state, except the provisions of the preceding section. (1886, March 26; 83 v. 41; 75 v. 135, § 3.)

§ 376. [Authorizing certain mechanics' institutes to borrow money; liability of directors and trustees.] (§ 3768-1.)
Sec. 1. Any mechanics' institute, incorporated under the laws of this state prior to the year eighteen hundred and fifty-one, be and it is hereby authorized and empowered to borrow money, issue bonds or notes therefor, at no more than the legal rate of interest, and secure the same by mortgage upon its real estate. (82 v. 118.)

§ 377. [Directors not personally liable.] (§ 3768-2.)
Sec. 2. The directors and trustees of such corporation shall not be personally liable for debts contracted by virtue of this act. (82 v. 118.)

§ 378. [Accounts and receipts of disbursements.] (§ 3769.)
The officers of the corporation charged or intrusted with the receipts and disbursements of its funds or property shall make and keep like accurate and detailed accounts of such funds, and the receipts and disbursements thereof, as are required to be kept by the fund commissioners of the state; the trustees shall, on or before the third Monday in January of each year, file with the clerk of the court of common pleas of the county in which the corporation is located an abstract of their account, which abstract shall correspond in date, amount, person to whom paid, and from whom received, and on what account, with the voucher taken or given on account of such re-

ceipts and disbursements; they shall at the same time, annually, file in such clerk's office a report of the names of the donors, the kind, amount, or value of gifts of each, and a brief statement of the conditions and purposes of the gifts; and the filing of such abstract and report, and the supplying of any omission in either, may be enforced by order and attachment of the court of common pleas of the proper county, against the trustees, on motion of any respectable citizen. (75 v. 135, § 4.)

§ 379. [Trustees ineligible to other office.] (§ 3770.) No trustee shall be eligible to any office or agency of the corporation to which any salary or emoluments is attached, nor shall the trustees be allowed any salary, emoluments, perquisites, except the right of free ingress to the grounds, rooms, and buildings of the corporation. (75 v. 135, § 5.)

§ 380. [Attorney general may, by action, enforce duties of officers.] (§ 3771.) On application to the attorney general of five citizens of the proper county, in writing, verified by the oath or affirmation of one of them, setting forth specific charges against any of the fiscal or other agents or trustees of such corporation, involving a breach of trust or duty, he shall give notice thereof to the trustees or agents complained of, and inquire into the truth of such charges, and for this purpose he may receive affidavits, or enforce, by process from the court of common pleas of Franklin county, the production of papers and the attendance of witnesses before him; and if, on testimony or other evidence, he believes the charges, or any of them, to be true, he shall proceed, by action in that court, in the name of the state, against the delinquent trustee or trustees, fiscal agent or agents, and, on the hearing, the court may direct the performance of any duty, or the removal of all or any of the agents or trustees and decree such other and further relief as may be equitable. (75 v. 135, § 6.)

§ 381. [How number of trustees of certain colleges increased.] (§ 3771a.) The board of trustees of any university or college heretofore incorporated, but not under the patronage of conferences or other ecclesiastical bodies of any religious denomination, as described in section 338 (§ 3736), may increase the number of such trustees to twenty-four, exclusive of the president, or a less number, and may divide said trus-

tees into six classes, each class to serve six years, and one class to be chosen each year, for said term; but one trustee of each class may be chosen by the votes of the alumni of such university or college, if the board of trustees shall so provide by by-law, in which case it shall also be the duty of the board of trustees to provide, by such by-laws, a method of nominating and electing such appointee of the alumni. The president of such university or college shall, *ex officio*, be a trustee perpetually, and shall not be included in the classes going out in rotation. If it shall be necessary, in the first enlargement of the board of trustees, under this section, to distribute new members to the several classes, whose terms shall expire by rotation, the distribution may be made in such manner as the board may direct, so that no trustee shall be elected for a longer term than six years. (87 v. 188; 86 v. 341.)

CHAPTER 16.

SCHOOLS SPECIALLY ENDOWED.

SECTION.		SECTION.	
§ 382 (4105-67)	Courts of common pleas to appoint trustees for schools specially endowed; powers of trustees.	§ 384 (4105-69)	Duties of trustees.
§ 383 (4105-68)	Filling vacancies.	§ 385 (4105-70)	Same; oath; bond.
		§ 386 (4105-71)	Accounts to be rendered.
		§ 387 (4105-72)	Visitors.
		§ 388 (4105-73)	When to take effect.

§ 382. [Courts of common pleas to appoint trustees for schools specially endowed; powers.] (§ 4105-67.) Sec. 1. Whenever any person shall, by deed, devise, gift or otherwise, set apart any lands, moneys or effects, as an endowment of a school or academy, not previously established, and shall not provide for the management of such school or academy, the court of common pleas of the proper county shall appoint five trustees, who shall have the control and management of the property, moneys, and effects, so set apart, and of the school or academy thus endowed, and shall hold their offices for five years, and until their successors are elected and qualified; but in making the first appointment the court shall appoint one trustee for one year, one for two years, one for three years, one for four years, and one for five years. The trustees shall be a body corporate, with perpetual succession, and by such name as may be ordered by the court making the first appointment; may sue and be sued; have a corporate seal and the same alter or change at pleasure, and may hold all kinds of estates, real and personal, and mixed, which they may acquire by purchase, donation, devise or otherwise. (53 v. 33; S. & C., 1383.)

§ 383. [Filling vacancies; removal.] (§ 4105-68.) Sec. 2. The said court shall annually appoint one trustee, to fill the vacancy then occurring; and at any other time fill vacancies that may occur from any cause, for the unexpired term; said court shall also have power upon sufficient cause shown, reasonable

notice of the time and place of hearing having been given to the party interested, remove any trustee, and may, until a hearing be had, suspend a trustee in the exercise of his office. (53 v. 33; S. & C., 1383.)

§ 384. [**Powers and duties of trustees.**] (§ 4105-69.) The trustees shall have power to establish, from time to time, rules and regulations for the management and safe-keeping of the property, moneys, and effects, belonging to the trust, and the expenditure of the income thereof, and also for the management and government of the school or academy; which rules and regulations shall not be inconsistent with the terms of the deed, devise or gift, creating the endowment, or with the laws of this state; they shall not, at any time, or for any cause, incur any debt or liability, beyond the net income of the trust property, moneys, and effects, or use or appropriate the same, otherwise than to invest for the purposes of income, any part of the principal thereof, unless expressly authorized so to do by the terms of the deed, devise or gift, creating the endowment of trust.

[**Contracts with board of education of districts in which school is located.**] The trustees of any school heretofore established under the provisions of this act, and in no way connected with any religious or other sect, and the board of education of the district in which such school is situated, shall have power to make contracts whereby said trustees shall receive into said school pupils from said district, who shall receive such instruction as is now, or may hereafter be, provided by law for public schools in this state; and, in consideration of such service by said trustees, such board shall have authority, under the general restrictions of the law relating to common schools, in so far as the same are applicable and not inconsistent herewith, to contribute to the maintenance of such school, and to pay such part of the cost of the erection of additional buildings, and upon such conditions, not inconsistent with the deed, devise or gift under which said school is established, as may be agreed upon by such board and such trustees.

Provided that if such school shall after the making of such contract become sectarian or in any way connected with any religious or other sect such contract shall thereupon terminate,

and when any such contract between the trustees and the board of education shall for such cause terminate, no right, title, or interest in or to any building toward the cost of which the board of education shall have contributed shall pass to the trustees until full compensation shall have been made to the board of education for the contribution made by such board to the construction of such building. (98 v. 206.)

§ 385. [**Same; oath; bond.**] (§ 4105-70.) Sec. 4. The trustees shall, immediately after their appointment, organize by appointing a president, secretary, and treasurer, from their own number, and shall severally take and subscribe an oath to faithfully discharge the duties of trustees, and deposit the same with the county auditor. They shall, also, before taking possession of the property, moneys, or effects, constituting the endowment or trust, severally give bond, in such sum as the court may require, with two or more sufficient sureties, to be approved by a judge of said court, whose approval shall be endorsed on the bonds, conditioned for the faithful management of the property, moneys, and effects, intrusted to them and accountability therefor in such form as the court or judge may require; and the court may, from time to time, require additional bonds and surety, as may appear necessary for the preservation of the trust estate. The bonds required shall be payable to the state of Ohio, and deposited in the office of the county auditor for safe keeping. (53 v. 33; S. & C., 1383.)

§ 386. [**Accounts to be rendered.**] (§ 4105-71.) Sec. 5. The trustees shall, on the second Monday of September, in each year, and at such other times as the court may require, render a full and accurate account, statement, and exhibit, of the condition of the school or academy under their management, and the condition of the trust estate and funds; and shall cause the same to be published in such form as the court may direct; which account, statement, and exhibit, shall be sworn to by the president, secretary, and treasurer, or some two of them. (53 v. 33; S. & C., 1383.)

§ 387. [**Visitors.**] (§ 4105-72) Sec. 6. The court of common pleas of the proper county shall, annually, at the first

session after the second Monday in September, appoint three competent and disinterested persons, who shall have authority to visit any such school or academy and examine the same, together with the condition of the trust estate or endowment, and shall report thereon to the court making the appointment. The court shall also authorize such other visitations and examinations as may appear to be necessary. (53 v. 33; S. & C., 1383.)

§ 388. [**When to take effect.**] (§ 4105-73.) Sec. 7. This act shall apply to endowments heretofore created, as well as to those hereafter created, and shall take effect from and after its passage. (53 v. 33; S. & C., 1383.)

CHAPTER 17.

COLLEGES AND UNIVERSITIES.

SECTION.

- § 389 (4095) Common council of any municipal corporation may accept educational trusts.
- § 390 (4096) How trust funds to be applied.
- § 391 (4097) Trusteeship to vest in city, etc.
- § 392 (4098) Board of directors; how appointed.
- § 393 (4098-1) Appointment of trustees of universities in Cincinnati supported by taxation in whole or in part.
- § 394 (4099) Powers of board; duties of city solicitor.
- § 395 (4100) Citizens not to be charged for admission of children; non-residents may be admitted.
- § 396 (4101) Accounts of receipts and expenditures of endowment fund; how said fund may be invested.
- § 397 (4102) When board may confer degrees; certain universities defined.
- § 398 (4103) Site and grounds for universities.
- § 399 (4104) When and how tax may be levied.
- § 400 (4105) Trust funds, board of education to act as trustee in certain cases; tax levy.
- § 401 (4105-1) Providing for the sale of certain

SECTION.

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§ 389. [Common council of any municipal corporation may accept educational trusts.] (§ 4095.) The board of directors of the university, college or other educational institution of any municipal corporation, in the name and on behalf of such corporation, may accept and take any property or funds heretofore or hereafter given to such corporation for the purpose of founding, maintaining or aiding a university, college or institution for the promotion of education, and upon such terms, conditions and trusts not inconsistent with law as the said board of directors may deem expedient and proper for that end. (97 v. 541.)

§ 390. [How trust funds to be applied.] (§ 4096.) For the further endowment, maintenance and aid of any such university, college or institution heretofore or hereafter founded, the board of directors thereof may, in the name and in behalf of such municipal corporation, accept and take as trustee and in trust for the purposes aforesaid any estate, property or funds which may have been or may be lawfully transferred to the municipal corporation for such use by any person, per-

sons or body corporate having the same, or any annuity or endowment in the nature of income which may be covenanted or pledged to the municipal corporation, towards such use by any person, persons or body corporate; and any person, persons or body corporate having and holding an estate, property or funds in trust or applicable for the promotion of education, or the advancement of any of the arts or sciences, may convey, assign and deliver the same to such municipal corporation as trustee in his, their or its place, or covenant or pledge its income or any part thereof to the same; and any such estate, property, funds or income shall be held and applied by such municipal corporation in trust for the further endowment, maintenance and aid of such university, college or institution, in accordance nevertheless with the terms and true intent of any trust or condition upon which the same was originally given or held. (97 v. 542.)

§ 391. [Trusteeship to vest in city, etc.] (§ 4097.) Upon such transfer and the acceptance thereof by the municipal corporation and its successors, as trustees shall become and be perpetually obligated and held to observe and execute such trust in all respects according to any other or further terms or conditions lawfully agreed upon at the time of such transfer and acceptance; and any court having jurisdiction of the appointment of trustees of such trust for educational purposes, may, in a proceeding for that purpose duly instituted and had, appoint and constitute such municipal corporation with the consent of its council, trustee of the estate, property and funds so transferred to it, and may dispense with bond and surety upon the part of the municipal corporation for the performance of such trust, unless the same is required by the original terms or conditions thereof, and shall upon the due transfer and acceptance of such trust by the municipal corporation, release and fully discharge the trustee, or trustees so transferring the same; and any acceptance or acceptances by such municipal corporation of any or all property, funds, rights, trust estate or trusts heretofore given, granted, assigned, or otherwise conveyed or transferred to, or bestowed upon any such municipal corporation or to or upon any such university, college or institution in good faith, and which are still held and retained by such municipal cor-

poration, or any such university, college or institution, shall be held and deemed to be valid and binding as to all parties. (97 v. 542.)

§ 392. [Board of directors; how appointed.] (§ 4098.) The custody and management of any and all estates, property, or funds so given, or transferred in trust to said city, and the entire administration of any and all such trusts so accepted by the common council thereof, and any university, college or institution for the promotion of education heretofore or hereafter so founded in or by said city, except the common and high schools thereof, shall be committed to a board of nineteen directors, of whom the mayor of the city shall be one, and the others shall be appointed by the common council from persons of approved learning, discretion, and fitness for the office, six of whom shall be appointed from persons nominated to the common council by the board of education of the city, and twelve from persons nominated to the common council by the superior court of said city, if there be such court; the term of office of each director shall be six years. Such directors shall serve until the election or qualification of their successors; and any vacancy in the board caused by expiration of term, resignation, removal, or any other cause, shall be filled by appointment herein provided for the unexpired term. The board of directors shall, at the first regular meeting in January, elect a chairman, who is hereby authorized to administer the oath of office to any director so appointed. (1889, April 13; 86 v. 292; 78 v. 178; Rev. Stat. 1880; 67 v. 86, § 3.)

§ 393. [Appointment of trustees of universities in Cincinnati supported by taxation in whole or in part.] (§ 4098-1.) In cities of the first grade of the first class all vacancies in the board of directors or trustees of universities supported in whole or in part by public taxation upon the property of such city, shall be filled by appointment by the judge or judges of the superior court of such cities where the same have a court; otherwise by the judge or judges of the common pleas court of the county in which such cities are located. (89 v. 31.)

§ 394. [Powers of board; duties of city solicitor.] (§ 4099.)
As to all matters not heréin or otherwise provided by law, such board of directors shall have all the authority, power and control vested in or belonging to such municipal corporation as to the management and control of the estate, property and funds, given, transferred, covenanted or pledged to the municipal corporation for the trusts and purposes aforesaid, and the government, conduct and control of such university, college or institution; it may appoint a clerk and all agents proper and necessary for the care and administration of the trust property, and the collection of the income, rents and profits thereof; it may appoint a president, professors, tutors, instructors, agents and servants necessary and proper for such university, college or institution, and fix their compensation; it may provide all the necessary buildings, books, apparatus, means and appliances, and may pass all such by-laws, rules and regulations concerning the president, professors, tutors, instructors, agents, and servant, and the admission, government and tuition of students, as it may deem wise and proper, and it may, by suitable by-laws, delegate and commit the admission, government, management and control of the students, courses of studies, discipline and other internal affairs of such university, college or institution, to a faculty which the board of directors may appoint from among the professors.

The solicitor of such municipal corporation shall, whenever requested so to do by resolution of said board, prosecute and defend, as the case may be, for and in behalf of the corporation, all complaints, suits and controversies in which the corporation or such board is a party, and which relate to any property, funds, trusts, rights, claims, estate or affairs, which shall or may be under the control or direction of said board, or which shall, in any manner, relate to the conduct or government of such university, college or institution. (97 v. 542.)

§ 395. [Citizens not to be charged for admission of children; non-residents may be admitted.] (§ 4100.) Citizens of such municipality shall not be charged for instruction in the academic department, except in professional courses therein. Such board of directors may charge fees to students in other

departments and to students in professional courses in the academic department, and shall have power in its discretion from time to time to make such university, college or institution free in any or all of its departments to citizens of such county in which such university, college or institution may be located. The board of directors may in their discretion receive other students on such terms as to tuition or otherwise as they may see fit. (97 v. 543.)

§ 396. [Accounts of receipts and expenditures of endowment fund; how said fund may be invested.] (§ 4101.) The accounts of such trust estate, property and funds, and of the income and expenditure thereof, shall be kept by the auditor of such municipal corporation entirely distinct from all other accounts or affairs of the municipal corporation, and the moneys shall be kept by the treasurer of the municipal corporation distinct from other moneys. And the said board of directors shall, at all times, confine their disbursements for current expenses within the income of the trust, estate, property and funds, and shall annually report to the mayor and council of such municipal corporation a full statement of the accounts of administration of such trust and other funds; and said board of directors is hereby authorized to invest any part of the funds belonging to, or set apart for the use of such university, college or institution, or to any department thereof, as it may, from time to time, deem proper, in bonds of the United States or of the State of Ohio, or of any municipal corporation in the State of Ohio, or any county or school district in the State of Ohio, or in any other bonds or first mortgage securities approved by the board of directors; and said board is further authorized to use any funds under its control for the improvement of real estate belonging to, or set apart for the use of, such university, college or institution. (97 v. 543.)

§ 397. [When board may confer degrees; certain universities defined.] (§ 4102.) The board of directors of such university, college or institution, may, upon the recommendation of the faculty thereof, confer such degrees and honors as are customary in universities and colleges in the United States, and such others as with reference to the course of studies and

attainments of the graduates in special departments it may deem proper.

A university supported in whole or in part by municipal taxation, is hereby defined as an assemblage of colleges united under one organization or management, affording instruction in the arts, sciences and the learned professions, and conferring degrees. (97 v. 544.)

§ 398. [Site and grounds for universities.] (§ 4103.) The council of any such municipal corporation may set apart, or appropriate as a site for the buildings and grounds of any such university, college or institution, any public grounds of the city not especially appropriated or dedicated by ordinance to any other use, any other law to the contrary notwithstanding; and the board of education of any such municipal corporation may also, for a like purpose, set apart, convey or lease for a term of years, any grounds or building owned or controlled by such board of education. Any grant for the use of such grounds or buildings heretofore or hereafter made by any council or board of education, may be modified, changed or extended as to the time when the same shall take effect and be in force, or otherwise, by agreement between said council, or board of education, and the board of directors of such university, college or institution, and said council shall be taken and held to be the representative of such municipal corporation vested with the title, right of possession and entire control of such property for the purposes of a new grant. (97 v. 544.)

§ 399. [When and how tax to be levied.] (§ 4104.) The council may assess and levy annually a tax on all the taxable property of such municipal corporation to the amount of five-tenths of one mill on the dollar valuation thereof, to be applied by said board to the support of such university, college or institution, and may also levy and assess annually five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purposes

exclusively; provided, however, that the taxes specified in this section shall only be levied and assessed when the chief work of such university, college or institution is the maintenance of courses of instruction, in advance of, or supplementary to, the instruction authorized to be maintained in high schools by boards of education. Said levies shall be made by council at the same time, and in the same manner as other levies for other municipal purposes, and shall be certified by council and placed upon the tax duplicate in the same manner as other municipal levies. The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor. (98 v. 128.)

§ 400. [Trust funds, board of education to act as trustee in certain cases; tax levy.] (§ 4105.) The custody, management and administration of any and all estates or funds, given or transferred in trust to any municipality for the promotion of education, and accepted by the council thereof, and any institution for the promotion of education heretofore or hereafter so founded other than a university as defined by this act, shall be committed to, and exercised by, the board of education of the school district including such municipality, and such board of education shall be held the representative and trustee of such municipality in the management and control of such estates and funds so held in trust and in the administration of such institution, excepting always such funds and estates held by any municipality which are used to maintain a university as defined by this act. And for the uses and purposes of such board of education in administering such trusts, the council of such municipality may annually levy taxes on all the taxable property of such municipal corporation to the amount of three-tenths of one mill on the dollar valuation thereof. (97 v. 545.)

OHIO UNIVERSITY (ATHENS).

§ 401. [Providing for sale of university lands.] (§ 4105-1.)
Sec. 1. The owner of the lands or town lots held under leases from the president and trustees of the Ohio University, or held under sale-leases or assignments by or under the original

lessees, may pay to the treasurer for the time being of said university, such sum of money, as being put at interest at six per cent. will yield the amount of rent reserved in the original lease, or in case of a division of the original tract or parcel leased, will equal the proper aliquot part thereof, or the part agreed upon by the several owners; providing, that such person so surrendering and releasing to said corporation shall pay the necessary expenses incident to such change of tenure, and procure the services of an agent to perform the necessary labor thereof; and upon payment of such sum and of all rents due upon the land, the treasurer aforesaid shall, on demand of such owner, give him a certificate of such payment. (80 v. 193.)

State Normal School, see chapter 14.

Members of Legislature not eligible to be trustees, see section 18-1, P. S.

§ 402. [Owner to receive deed; form of.] (§ 4105-2.) Sec. 2. That such owner, upon such payment, shall be entitled to receive a deed of conveyance for such land by him owned, to be signed by the president of said corporation, countersigned by its secretary, and sealed with the corporate seal of the university, conveying the premises in fee simple to such owner, or such owner may, at his option, demand and receive a certificate as aforesaid; and the governor of Ohio, upon presentation thereof, shall execute and deliver to such owner, a deed in due form of law conveying the premises in fee simple to such owner. (80 v. 193.)

§ 403. [Validity of such deed.] (§ 4105-3.) Sec. 3. That either of such deeds, so made, shall have the effect in law and in fact to vest in the grantee an absolute estate in fee simple in the premises, subject, however, to all liens, equities, or rights of third persons in, to or upon the premises. (80 v. 193.)

§ 404. [Registry of deed, etc., to be kept.] (§ 4105-4.) Sec. 4. It shall be the duty of such secretary to keep an accurate registry of all such payment, certificates and deeds, with an accurate description of the tract or lot of land so paid for or deeded; and thereafter, the lands so deeded shall be subject to taxation, in like manner as other freehold es-

tates in said county; and the original leases therefor, in so far as regards the land so deeded, shall cease to have force or effect. 80 v. 193.)

§ 405. [Proceeds to be deposited in state treasury, and become irreducible trust fund.] (§ 4105-5.) Sec. 5. That it shall be the duty of the treasurer of the Ohio University, on or before the first day of January, next, after said receipt of money, to deposit the same in the state treasury upon the certificate of the state auditor, and the sum so deposited shall be added to the irreducible trust funds held by the state for education purposes, and interest thereon shall be paid semi-annually to the treasurer of said university, upon the requisition of the state auditor. (80 v. 193.)

§ 406. [Levy and collection of state tax upon lands donated to Athens University for use of said university.] (§ 4105-6.) Sec. 1. Hereafter a state tax or a tax equal to the state tax upon like property, shall be levied and collected upon all lands donated to the Ohio University, situated at Athens, Ohio, and held by lease from said university or by deed from the governor or the said university, including such parts of said lands as are or may be owned, occupied or used by railroad companies as roadbeds, roadways, station houses, or for other purposes; and the said taxes when collected shall be paid over by the treasurer of Athens county, upon the warrant of the auditor of said county, to the treasurer of the Ohio University, for its use. (82 v. 115.)

§ 407. [Tax in lieu of rents; tax collected from railroad companies not to include tax upon rolling stock.] (§ 4105-7.) Sec. 2. That the tax so to be collected upon lands so held by lease, shall be in lieu of so much of the rents due to the university; and the tax so to be collected from railroad companies, and paid to the university, shall not include the tax upon rolling stock. (82 v. 115.)

§ 408. [Repeal.] (§ 4105-8.) Sec. 3. That the act entitled "an act to refund to the Ohio University certain funds in the state treasury, and to provide for the future payment of the claims of said university," passed March 25, 1875, be and

is hereby repealed, saving however, all rights vested or required under said act. (82 v. 115.)

OHIO STATE UNIVERSITY (COLUMBUS).

§ 409. [Establishment and style of college.] (§ 4105-9.)

Sec. 1. A college, to be styled the Ohio Agricultural and Mechanical College, is hereby established in this state, in accordance with the provisions of an act of congress of the United States, passed July 2d, 1862, entitled "an act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," and said college to be located and controlled as hereinafter provided. The leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agricultural and mechanic arts. (67 v. 20.)

See chapter 14, as to State Normal School.

Right of way through Ohio University lands granted to the Lake Erie and Southern R'y. (88 v. 317.)

Right of way through same along Olentangy river granted to Columbus for a street. (89 v. 301.)

Acceptance of congressional appropriation of part of proceeds of sales of public lands to certain colleges and designating the treasurer of the Ohio State University to receive such moneys. (88 v. 519.)

Professor of physics to have charge of standards of weights and measures; section 142, R. S.

Member of legislature not eligible to be trustee; section 18-1, R. S.

State forestry bureau established at the State University; section 409-15 R. S.

§ 410. [Style and powers of trustees.] (§ 4105-10.) Sec. 4.

The trustees and their successors in office shall be styled the "Board of Trustees of the Ohio Agricultural and Mechanical College," with the right as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure. (67 v. 20.)

§ 411. [Further powers and duties.] (§ 4105-11.) Sec. 5.

The board of trustees shall have power to adopt by-laws, rules

and regulations for the government of said college; to elect a president; to determine the number of professors and tutors, elect the same, and fix their salaries. They shall also have power to remove the president or any professor or tutor whenever the interests of the college, in their judgment, shall require; to fix and regulate the course of instruction, and to prescribe the extent and character of experiments to be made. (67 v. 20.)

§ 412. [Who shall be admitted as pupils.] (§ 4105-12.)

Sec. 7. The college shall be open to all persons over fourteen years of age, subject to such rules and regulations and limitations, as to numbers from the several counties of the state, as may be prescribed by the board of trustees; provided, that each county shall be entitled to its just proportion, according to its population. The board may provide for courses of lectures, either at the seat of the college or elsewhere in the state, which shall be free to all. (67 v. 20.)

§ 413. [Prerogative of the trustees.] (§ 4105-13.) Sec. 8.

The board of trustees shall have the general supervision of all lands, buildings, and other property belonging to said college, and the control of all expenses therefor; provided, always, that said board shall not contract any debt not previously authorized by the general assembly of the state of Ohio. (67 v. 20.)

§ 414. [Officers of the board.] (§ 4105-14.) Sec. 9.

The board of trustees shall annually elect one of their number chairman, and in the absence of the chairman shall elect one of their number temporary chairman, and shall have power to appoint a secretary, treasurer, and librarian, and such other officers as the interests of the college may require, who may or may not be members of the board; and shall hold their offices for such term as said board shall fix, subject to removal by said board, and shall receive such compensation as the board shall prescribe. The treasurer shall, before entering upon the duties of his office give bond to the state of Ohio in such sum as the board may determine, which bond shall not be for a less sum than the probable amount that will be under

his control in any one year, conditioned for the faithful discharge of his duties and the payment of all moneys coming into his hands, said bond to be approved by the attorney general of the state. (67 v. 20.)

§ 415. [Board may receive devises of land, etc.] (§ 4105-15.) Sec. 11. The board of trustees shall have power to receive, and hold in trust, for the use and benefit of the college, any grant or devise of land, and any donation or bequest of money or other personal property, to be applied to the general or special use of the college; all donations or bequests of money shall be paid to the state treasurer, and invested in the same manner as the endowment fund of the college, unless otherwise directed in the donation or bequest. (67 v. 20.)

§ 416. [Title of lands to be vested in the state, etc.] (§ 4105-16.) Sec. 13. The title for all lands for the use of said college, shall be made in fee simple to the state of Ohio, with covenants of seizin and warranty, and no title shall be taken to the state for the purposes aforesaid until the attorney general shall be satisfied that the same is free from all defects and incumbrances. (67 v. 20.)

§ 417. [Attorney general to be legal adviser of the board.] (§ 4105-17.) Sec. 15. The attorney general of the state shall be the legal adviser of said board of trustees, and he shall institute and prosecute all suits in behalf of the same, and shall receive the same compensation therefor as he is entitled to by law for suits brought in behalf of the asylums of the state. (67 v. 20.)

§ 418. [Location of the college; sundry provisos.] (§ 4105-18.) Sec. 17. It shall be the duty of the board of trustees to permanently locate said agricultural and mechanical college upon lands, not less than one hundred acres, which in their judgment is best suited to the wants and purposes of said institution, the same being reasonably central in the state, and accessible by railroad from different parts thereof, having regard to healthiness of location, and also regarding the best interests of the college in the receipt of moneys, lands, or other properties donated to said college by any county, town,

or individual, in consideration of the location of said college at a given place; provided, it shall require a three-fifths vote of the trustees to make said location; and, provided further, that said location shall be made on or before the fifteenth day of October, 1870; provided, further, that any person acting as a trustee, who shall accept or receive, directly or indirectly, any sum or amounts from any person or persons, to use their influence in favor of the location of said college at any particular point or place, shall be held to be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be fined in any sum, not less than one thousand nor more than ten thousand dollars; provided, further, that in the location of said college the said trustees shall not in any event incur any debt or obligation exceeding forty thousand dollars; and if, in their opinion, the interests of the college can not be best promoted without a larger expenditure for the location than that sum, then they may delay the permanent location of the same until the third Monday of January, 1871, and report their proceedings and conclusions to the general assembly; provided, further, that said college shall not be located until there are secured thereto for such location, donations in money, or unincumbered lands, at their cash valuation, whereon the college is to be located, or in both money and such lands, a sum equal to at least one hundred thousand dollars. (67 v. 120.)

§ 419. [Acceptance of ceded lands.] (§ 4105-19.) Sec. 1. The unsurveyed and unsold lands ceded to the state of Ohio by a certain act of congress of the United States, approved February 18, 1871, situate and being in the Virginia Military district between the great Scioto and the Little Miami rivers in said state, be and the same are hereby accepted by the state of Ohio, subject to the provisions of said act. (70 v. 107.)

§ 420. [Compensation for damages to lands may be demanded, etc.] (§ 4105-20.) Sec. 2. The trustees of the Ohio agricultural and mechanical college are hereby authorized to demand from all persons who have destroyed or converted any timber growing upon the lands ceded to the state of Ohio, as stated in the act to which this is supplementary, since the date of said act of Congress ceding said lands to the state of

Ohio, full compensation for the timber so destroyed or converted, and for all damages, and if payment shall be refused, to institute proper proceedings in the name of said Ohio Agricultural and Mechanical College, in any court of competent jurisdiction, to recover the same with damages and costs of suit; provided, that the provisions of this section shall not apply to timber taken from the one hundred and sixty acres by any person who shall obtain the title to the same under section three of this act. (70 v. 107.)

§ 421. [Title of lands invested in trustees of agricultural college, etc.] (§ 4105-21.) Sec. 3. The title of said lands is hereby vested in the trustees of the Ohio Agricultural and Mechanical College for the benefit of said college; and said trustees are hereby required to cause a complete survey of said lands to be immediately made, and a correct plat thereof to be returned to said trustees, and to ascertain and set off, in reasonably compact form, by accurate boundaries to each occupant who was in actual possession of and living upon any of said lands at the time of the passage of said act of Congress, as provided therein, or their heirs and assigns, a tract not exceeding forty acres; and upon the payment, by the claimant, of the cost of surveying and making the deed, the said trustees shall make and deliver to said claimant a deed for said tract; and if any such occupant shall have been in such actual possession of more than forty acres, and is desirous of holding the same, he shall be entitled to have in addition to said forty acres, any number of acres not exceeding, with said forty acres, the number of one hundred and sixty acres, to be in reasonably compact form, by paying for the said excess over forty acres, the sum of one dollar per acre; and if any claimant under the provisions of this act shall desire to purchase any tract of land adjoining said forty acres, not exceeding, including said forty acres, the amount of one hundred and sixty acres, of which said claimant shall have been in actual possession, but does not desire to purchase the same at one dollar per acre, said trustees, upon notice by said claimant, shall cause said tract or part of tract to be sold separate from other tracts of land at a valuation fixed upon by the appraisers named in this act, payable one-third at the date of the survey, and the residue in two equal annual installments.

with interest at six per cent., payable annually, and upon full payment being made with the cost of survey and conveyance, said trustee shall make and deliver to such claimant, his or her heirs or assigns, a deed for said excess over forty acres; provided, that any person claiming the benefit of the provisions of this section as occupant, shall comply in all respects with, and be subject to the provisions of the thirteenth section of the act of Congress, approved September 4, 1841, entitled an act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights, and to the rules and regulations of the general land office of the United States relating to proof for the establishment of pre-emptor's claims; provided, however, that the affidavit required by said thirteenth section of said act of Congress may be made before any justice of the peace or other officer authorized to administer oaths. (70 v. 107.)

§ 422. [Division of unsold lands into tracts, etc.; tracts to be numbered and appraised.] (§ 4105-22.) Sec. 4. All the unsurveyed and unsold lands in said military district, not occupied as aforesaid, shall be divided by said trustees into such tracts, not exceeding five hundred acres in any one boundary, as will be most advantageous, reference being had to the quality of said lands and the uses to which they will be applied; the boundaries to all such tracts and divisions shall be accurately surveyed, and the lines of each tract plainly marked, and substantial stone monuments firmly placed at the principal corners. The character of the soil, water courses, elevation of hills, timber, ledges, or stratas of the Waverly building stone, iron ore, fire clay, and limestone, shall be fully noted by the surveyors on their plats and in their field books. All tracts so divided and surveyed shall be numbered in consecutive order, commencing with the tracts in Adams county, and so continuing until all said lands in said district shall be platted and numbered; which number shall be shown upon the plats, and the said plats shall correctly indicate all township lines. The said lands, when so divided, surveyed and numbered, shall be appraised in separate tracts at their true value in money, by three qualified freehold residents in said state. to be summoned by said trustees. or any committee of theirs. Said appraisers before entering upon their duties, shall take

and subscribe an oath before competent authority honestly and impartially to appraise all such lands, and to perform all other duties in relation thereto; they shall each be paid two dollars a day for their services, and their expenses allowed them; they shall make due return of all their appraisements to said trustees, which, with all said plats and surveys, shall be delivered by them to the auditor of state, and the same shall be recorded in the office of said auditor in suitable books to be provided for such purpose; which, with all such original plats, surveys, and papers, shall form a part of the public records of the state in the land department of said office. (70 v. 107.)

§ 423. [To be sold at private or public sale; contracts of sale to be recorded, etc.] (§ 4105-23.) Sec. 5. And the said trustees are hereby authorized and required to sell all of said lands at public or private sale, at a price not less than the appraised value thereof, on such terms for cash and credit as may be agreed upon between the purchaser and said trustees, or any authorized agent of theirs; provided, that the first payment shall, in every case, be not less than one-third of the appraised value of such tract; all deferred payments shall bear six per cent. interest, to be paid annually, and said trustees may, in their discretion, extend subsequent annual payments through a period not exceeding five years. All public sales of said lands shall be by auction, at the front door of the court house of the county in which these lands so offered lie, after having been advertised five consecutive weeks in a newspaper published and generally circulated in such county; such notices of sale shall contain a sufficient description of the premises to clearly identify the same, with a statement of the terms of payment and the amount of appraisement, and all such public sales shall be made at such times as said trustees shall deem expedient; and in case such land or any tract thereof shall not sell for the amount of the appraisement at such public sale, then upon the same being again offered as aforesaid at public sale, the same may be sold for any sum not less than three-fourths of the appraisement; provided, that no trustee of said college or appraiser of said land shall be the purchaser of any of said lands at any such sale or sales, directly or indirectly. The said trustees shall cause all contracts

for the sale of said lands to be printed or written in a book or books, stating the consideration and terms of all sales, which said contracts shall be signed in duplicate by the said trustees or any authorized agent of theirs, and by the purchaser or purchasers, one copy of which shall be preserved in said book, and the other shall be delivered to the purchaser at the time the same shall be signed; and every purchaser shall execute his promissory note or notes, with interest, payable as aforesaid, for all deferred payments, which notes shall be non-negotiable, and payable to said college at such place or places as may be directed by said trustees; and upon full payment being made by the purchaser, his heirs or assigns, for any such land, every such person shall be entitled to receive a conveyance therefor in fee simple by deed of said trustees, executed by the president of the board, under the corporate seal of said college; and all lands disposed of under the provisions of this act, shall be returned by said trustees to the auditor of the counties in which they are situate, and by them be placed on the duplicate for taxation. (70 v. 107.)

§ 424. [Trustees of Ohio State University may erect residences for faculty.] (§ 4105-24.) The proceeds of the sales of such lands, or so much thereof as may be necessary after the payment out of the same of all the necessary expenses of survey and sale remaining uncertified into the treasury of said state, may be used by said trustees in building and maintaining upon the lands of said university a suitable number of houses, adapted to use as family residences, for the use of members of the faculty of said university, for which use a fair and reasonable rent shall be paid to said university. Said buildings shall be erected under the provisions of title six of the Revised Statutes of Ohio; and the said trustees shall annually report to the governor a detailed statement of receipts and disbursements in the execution of the trusts under the provisions of this act. (1882, April 17; 79 v. 144; Rev. Stat. 1880; 70 v. 107.)

§ 425. [Acts repealed.] (§ 4105-25.) Sec. 7. The act entitled an act to sell lands ceded to the state of Ohio by the Congress of the United States by act of Congress, approved February 18, 1871, passed March 26, 1872, and the act sup-

plementary thereto and amendatory thereof, passed April 29, 1872, be and they are hereby repealed; provided, that the passage of this act shall in no wise affect the validity of the transactions of said board of trustees, or rights vested in any person, under the provisions of said acts; and this act shall take effect and be in force from and after its passage. (70 v. 107.)

§ 426. [**Ohio State University; establishment of a school of mines; course of study; apparatus, etc.**] (§ 4105-26.) Sec. 1. The trustees of the Ohio State University be and they are hereby required to establish in said university, a school of mines and mine engineering, in which shall be provided the means for studying scientifically and experimentally the survey, opening, ventilation, care and working of mines; and said school shall be provided with a collection of drawings, illustrating the manner of opening, working, and ventilating mines, and with the necessary instruments for surveying, measuring air, examining and testing the noxious and poisonous gases of mines, and also with the models of the most improved machinery for ventilating and operating all the various [kinds] of mines with safety to the lives and health of those engaged. Said school shall also be provided with complete mining laboratories for the analysis of coals, ores, fire clays and other minerals, and with all the necessary apparatus for testing the various coals, ores, fire clays, oils, gases, and other minerals. (1888, April 4; 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

§ 427. [**Employment and duties of instructors; cabinet of specimens to be kept.**] (§ 4105-27.) Sec. 2. Said trustees shall employ competent persons to give instruction in the most improved and successful methods of opening, [and operating] surveying and inspecting mines, including the methods and machinery employed for extracting coal, ore, fire clay, oil, gas and other minerals from the pit's mouth and for facilitating the ascent and descent of workmen, the draining and freeing of mines from water, the causes of the vitiation of air, the quantities of fresh air required under various circumstances, natural ventilation, mechanical ventilation by flues and fans, and other ventilating machinery, the use of

air engines, air compressors and coal cutting machinery; also instruction in the various uses of coals, ores, fire clays, oils, gases and other minerals, and the methods of testing, analyzing and assaying such minerals; also the methods employed in metallurgical and other processes in the reduction of ores and in determining the qualities of metals, particularly iron and steel, as shown by practical and laboratory tests; and there shall be kept in a cabinet properly arranged for ready reference and examination, suitably connected with said school of mines samples of the specimens from the various mines in the state, which may be sent for analysis, together with the names of the mines and their localities in the counties from which they were sent, and the analysis and a statement of their properties attached (it shall also be his duty to furnish analysis of all minerals found in the state and sent to him for that purpose by residents of this state). (1888, April 4; 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

§ 428. [Appropriation.] (§ 4105-28.) Sec. 3. There is appropriated out of the general revenue fund the sum of three thousand five hundred dollars to be expended in the equipment, support and maintenance of said school of mines as provided for in the first and second sections of this act. (1888, April 4; 85 v. 155; Rev. Stat. 1880; 74 v. 216.)

§ 429. [Support of Ohio State University law school.] (§ 4105-29.) Sec. 1. The board of trustees of the Ohio State University are hereby authorized and empowered to appropriate annually, for the period of ten years, to the support and maintenance of the school of law of the Ohio State University, out of the fund derived under section 3951 (§ 51) of the Revised Statutes of Ohio, amended March 20, 1891 (88 O. L., 159), a sum not exceeding five thousand dollars, in addition to the sum derived from the tuition fees of the students in said school of law. (90 v. 253.)

§ 430. [Ohio State University department of ceramics.] (§ 4105-30.) Sec. 1. The trustee of the Ohio State University be and they are hereby required to establish in said university a department of ceramics, equipped and designed for the technical education of clay, cement and glass workers, in all branch-

es of the art which exist in this state, or which can be profitably introduced and maintained in this state from the mineral resources thereof, including the manufacture of earthenwares, stonewares, yellowwares, whitewares, china, porcelain and ornamental pottery, also the manufacture of sewer pipe, fireproofing, terracotta, sanitary claywares, electric conduits and specialties, firebricks and all refractory materials, glazed and enameled bricks, pressed bricks, vitrified paving material, as well as the most economic methods in the production of the coarser forms of bricks used for building purposes; also the manufacture of tiles used for paving, flooring, decorative wall-paneling, roofing and draining purposes, also the manufacture of cement, concrete, artificial stone and all kinds of glass products and all other clay industries represented in our limits. (91 v. 164.)

§ 431. [**Special instruction.**] (§ 4105-31.) Sec. 2. Said department shall offer special instruction to clay workers on the origin, composition, properties and testing of clays, the selection of materials for different purposes, the mechanical and chemical preparation of clays, the laws of burning clays, the theory and practice of the formation of clay bodies, slips and glazes, and the laws which control the formation and fusion of silicates. (91 v. 164.)

§ 432. [**Laboratory.**] (§ 4105-32.) Sec. 3. Said department shall be provided with an efficient laboratory designed especially for the practical instruction of clay workers in the list of subjects enumerated in the second section of this act, and also equipped to investigate into the various troubles and defects incident to every form of clay working, which can not be understood or avoided except by use of such scientific investigation. Said laboratory shall be equipped with apparatus for chemical analysis, with furnaces and kilns for pyrometric and practical trials, with such machinery for the grinding, washing and preparation of clays for manufacture as is consistent with the character of the department. (91 v. 164.)

§ 433. [**Expert.**] (§ 4105-33.) Sec. 4. Said trustees shall employ to conduct this department of ceramics a competent

expert, who shall unite to the necessary education and scientific requirements, a thorough practical knowledge of clay working, and not less than two years' actual experience in some branch of the art. It shall be his duty to teach the theoretical part of the subject and to conduct the laboratory for the instruction of students, and also to prosecute such scientific investigation into the technology of the various clay industries as may be practicable, and from time to time to publish the results of his investigations in such form that they will be accessible to the clay workers of the state for the advancement of the art. (91 v. 164.)

§ 434. [Appropriations.] (§ 4105.) Sec. 5. There shall be hereafter appropriated out of the general revenues of the state the sum of five thousand dollars, to be expended in the organization, equipment and maintenance of said department, as provided for in the first four sections of this act, for the current year, and there shall be appropriated from the same fund the sum of two thousand five hundred dollars annually for two years for the salary, supplies and all other expenses of maintenance of said department. (91 v. 164.)

§ 435. [Written analysis to be furnished by professor of chemistry at agricultural college.] (§ 4105-35.) Sec. 2. It shall be the duty of the professor occupying the chair in the chemical and mechanical department of the Ohio agricultural and mechanical college, upon application, to make and give a written analysis of such artificial fertilizers as may be furnished to him for that purpose. (75 v. 91.)

§ 436. [To be known as "The Ohio State University."] (§ 4105-36.) Sec. 1. The educational institution heretofore designated as the Ohio Agricultural and Mechanical College shall be known and designated hereafter as "The Ohio State University." (75 v. 126.)

§ 437. [To be governed by board of seven trustees; how and by whom appointed.] (§ 4105-37.) Sec. 2. The government of said university shall be vested in a board of seven trustees, who shall be appointed by the governor of the state, with the advice and consent of the senate; but no trustee, or his relation

by blood or marriage, shall be eligible to any professorship or position in the university, the compensation for which is payable out of the state treasury, or said college fund. (75 v. 126.)

§ 438. [Their terms of office; to be paid their expenses while engaged in the discharge of duties.] (§ 4105-38.) Sec. 3. The members of said board of trustees and their successors shall hold their offices for the term of seven years each; provided, that the trustees first appointed under the provisions of this act shall hold their terms for one, two, three, four, five, six, and seven years, respectively, to be fixed by the governor in their commissions. In case a vacancy shall occur from death or other cause, the appointment shall be for the unexpired term. The trustees shall not receive any compensation for their services, but they shall be paid their reasonable and necessary expenses while engaged in the discharge of their official duties. (75 v. 126.)

§ 439. [Powers and duties of board.] (§ 4105-39.) Sec. 4. The board of trustees shall have power, and it is made their duty, to collect, or cause to be collected, specimens of the various cereals, fruits, and other vegetable products, and to have experiments made in their reproduction upon the lands of the university, and to make report of the same, from year to year, together with such other facts as may tend to advance the interests of agriculture. (75 v. 126.)

§ 440. [Collections of specimens.] (§ 4105-40.) Sec. 5. The board of trustees shall have power, and it is hereby made their duty to secure and keep in the said university a collection of specimens in mineralogy, geology, zoology, botany, and other specimens pertaining to natural history and the sciences; and it shall be the duty of the president of the university to collect and deposit in the said university, in such manner as shall be directed by the trustees, a full and complete set of specimens as collected by him and his assistants, together with a brief description of the character of the same, and where obtained; and the said specimens shall be properly classified and kept for the benefit of said university. (75 v. 126.)

§ 441. [Meetings of board of trustees.] (§ 4105-41.) Sec. 6. The first meeting of the members of the board shall be called by the governor, as soon after the appointment of said board as convenient, to be held at said university, in Columbus, Ohio. All succeeding meetings shall be called in such manner, and at such times as the board may prescribe. The said board shall meet at least three times annually, and at such other times as they may think necessary for the best interests of the said university. A majority of the board of trustees present at any meeting shall constitute a quorum to do business; provided, a majority of all the board shall be required to elect or remove a president or professor. (75 v. 126.)

§ 442. [Annual report of trustees; fiscal year; printing and distribution of report.] (§ 4105-42.) Sec. 7. The board of trustees shall cause to be made on or before the first of October of each year a report to the governor of the condition of said university; the amount of receipts and disbursements, and for what the disbursements were made; the number of professors, officers, teachers, and other employes and the position and compensation of each; the number of students in the several departments and classes, and the course of instruction pursued in each; also an estimate of the expenses for the ensuing year; a statement showing the progress of the university, recording any improvements and experiments made, with their costs and the results, and such other matters as may be supposed useful. Said annual report shall be for the year ending June 30, and the said Ohio State University is hereby exempted from the provisions of section 172, Revised Statutes of Ohio. There shall be printed under the provision of section 58 of the Revised Statutes of Ohio, as amended May 1, 1891 (O. L. v. 88, p. 498), five thousand copies of the said annual report, to be distributed by the trustees in such manner as they shall deem best for the interest of said university. The president of said university shall submit by mail one copy to the secretary of the interior, one copy to the secretary of agriculture, and one copy to each of the colleges which are, or may be endowed under the provisions of the act of congress of July 2, 1862. (90 v. 292; 75 v. 126.)

§ 443. [**Funds from the sale of land script to form part of irreducible debt; and interest of same paid to university.**] (§ 4105-43.) Sec. 8. All funds derived from the sale of land script issued to the state of Ohio by the United States, in pursuance of the aforesaid act of congress, together with the interest accumulated thereon, shall constitute a part of the irreducible debt of this state, the interest upon which, as provided by the act of February 10, 1870 (O. L., vol. 67, p. 15), shall be paid to the university by the auditor of state, upon the requisition of the commissioners of the sinking fund, issued on the certificate of the secretary of the board of trustees, that the same has been appropriated by said trustees to the endowment, support, and maintenance of the university, as provided in the act of congress aforesaid. (75 v. 126.)

§ 444. [**Compensation of president, professors, teachers, etc.**] (§ 4105-44.) Sec. 9. That said board of trustees shall fix the compensation for the president, professors, teachers and all other employes of the university; provided, that the compensation for the services of the professors shall not exceed twenty-five hundred dollars each per annum. (91 v. 74; 75 v. 126.)

§ 445. [**Branches prescribed at Ohio State University.**] (§ 4105-45.) Sec. 10. It shall be the duty of the board of trustees, in connection with the faculty of the university, to provide for the teaching of such branches of learning as are related to agriculture and the mechanic arts, mines, and mine engineering, and military tactics, and such other scientific and classic studies as the resources of the fund will permit. (1880, April 15; 77 v. 227; Rev. Stat., 75 v. 126.)

§ 446. [**Computation and investment of interest.**] (§ 4105-46.) Sec. 1. The auditor of state be and is required to compute the interest which has accrued and will accrue on the agricultural college scrip fund since the same has been sold, to July first, one thousand eight hundred and seventy, compounding the same by semi-annual rests on the first day of January and the first day of July in each year; and on the fifteenth day of June eighteen hundred and seventy to transfer the sum so arising to the said college fund, and in-

vest the same in the interest-bearing bonds of the State, in the same manner as the principal of the said fund is now invested. (67 v. 15.)

§ 447. [How interest invested.] (§ 4105-47.) Sec. 2. That on the first day of July, eighteen hundred and seventy, and every six months thereafter (viz: on the first day of January and July, respectively) the auditor of state shall invest the interest of said funds falling due in the same manner as the principal now invested. (67 v. 15.)

§ 448. [Trustees of Ohio State University authorized to make deeds.] (§ 4105-48.) Sec. 1. As soon as the board of trustees of the Ohio State University accepts the provisions hereinafter made, it is hereby authorized and required to execute and deliver upon demand, a deed of conveyance to the parties in possession under claim of title of any unpatented survey or part thereof, in said Virginia Military District; provided, however, that all applicants for such deed must furnish said trustees with a certified copy of the deed under which they claim, and if required, a certified copy of the unpatented survey in which their lands are situate, as the necessary evidence to satisfy the board that the same has never been patented, but has been occupied and improved by the said parties in possession or those under whom they claim title, for more than twenty-one years. Provided, also, that each applicant shall pay the board of trustees the sum of two dollars, as the cost of preparing and executing such deed. (86 v. 92.)

§ 449. [Duty of auditor of state.] (§ 4105-49.) Sec. 2. The auditor of state shall add the sum of one dollar per acre, reckoned by the number of acres of land in each actual survey for all conveyances so made to that part of the irreducible debt of the state, which forms the endowment of said Ohio State University; provided, that in cases where suit has been brought for the recovery of said lands, persons demanding deeds of release, shall pay all court costs of such suits. (86 v. 92.)

§ 450. [Relief of persons who wrongfully paid for lands in Virginia Military District; duty of auditor of state.]

(§ 4105-50.) Sec. 1. All persons who were in possession of lands in the Virginia Military District under claim of title of an unpatented survey or part thereof, said lands having been occupied and improved by said persons in possession or those under whom they claim title for more than twenty-one years and were compelled by suit, or the fear thereof, to pay the Ohio State University for said lands, are hereby authorized to present a statement of the amount of money so paid by them, together with all the facts relating to the land held by them and their title thereto, to a board composed of the secretary of state, auditor of state and attorney general, who are hereby authorized and empowered to examine such statements and call for and examine such other testimony as they see fit, and if upon such examination said board are satisfied that said persons are justly entitled to relief as those persons were who have obtained relief under the provisions of the aforesaid act, then said board shall determine how much said party has wrongfully paid and issue and order to the auditor of state directing him to draw his warrant on the treasurer of state for the said amount in behalf of the person filing said statement; provided, that where such claims have been heretofore as (or) shall hereafter be allowed by said board, the auditor of state shall add the amount thereof to that part of the irreducible debt of the state which constitutes the endowment fund of said Ohio State University. (91 v. 375; 90 v. 221.)

§ 451. [Appropriation.] (§ 4105-51.) Sec. 2. That there be and is hereby appropriated, out of any money in the state treasury accredited to the fund of the Ohio State University, the sum of twelve hundred and ninety-six dollars to pay said warrants. (90 v. 221.)

§ 452. [Costs of obtaining evidence.] (§ 4105-52.) Sec. 3. That persons filing such statements shall pay all the costs incurred in obtaining evidence. (90 v. 221.)

§ 453. [Report to general assembly.] (§ 4105-53.) Sec. 4. Said board shall report all its proceedings to the general assembly. (90 v. 221.)

WILBERFORCE UNIVERSITY.

§ 454. [Normal and industrial department at Wilberforce University.] (§ 4105-54. Sec. 1. There shall be established and maintained at Wilberforce University, in Greene county, Ohio, a combined normal and industrial department. (84 v. 127.)

§ 455. [Board of trustees; appointment by governor, etc.] (§ 4105-55.) Sec. 2. To carry out the purposes of this act, there shall be and hereby is created a board of nine trustees to be known as "the board of trustees of the combined normal and industrial department at Wilberforce University," five shall be appointed by the governor by and with the consent of the senate, and three shall be chosen by the board of trustees of said university. The president of the university shall be *ex officio* a member of said board. The trustees so to be appointed by the governor, as aforesaid, shall be appointed, on or before the first day of May, 1896, and they shall hold their office respectively as follows: One for one year, two for two years, and two for four years the term of such to begin to run from July first, 1896; said term shall be designated by the governor in his message of appointment to the senate and in the commission issued to said trustees. At the session of the senate next preceding the expiration of the term of any trustee, the governor shall appoint his successor for the term of four years; and every appointment of the governor under this act shall be submitted to the senate for confirmation. (92 v. 275; 89 v. 368; 87 v. 215; 84 v. 127.)

§ 456. [Choosing of trustees by university board.] (§ 4105-56.) Sec. 3. The three trustees to be chosen as aforesaid by the board of trustees of said university shall be chosen at the first regular meeting of said board in June, 1892, after the passage of this act; and the three so chosen at such meeting, shall hold their offices, respectively, as follows: One for one year, one for two years, and one for three years, and the term of each to begin to run from the third Thursday in June, 1892. In anticipation of the expiration of the term of any trustee so chosen, the said university board shall, annually thereafter at its regular meeting choose his successor. who

shall hold his office for (the) term of three years. (89 v. 368; 84 v. 127.)

§ 457. [**Vacancies.**] (§ 4105-57.) Sec. 4. In case a vacancy in that portion of the board so appointed by the governor or chosen by the university board shall occur from death, resignation, or other cause, the appointment or selection to fill such vacancy shall be made in the one case by the governor, and in the other by the executive board of said university for the unexpired term. (84 v. 127.)

§ 458. [**Names of trustees chosen by university board to be certified to governor.**] (§ 4105-58.) Sec. 5. It shall be the duty of the secretary of the said university, immediately upon choice being made by the university board of three trustees as aforesaid, to certify to the governor, under the seal of said university, the names of the persons so chosen as trustees under this act, with their terms, respectively; and also the name of the person chosen by said executive board at any time to fill a vacancy. (84 v. 127.)

§ 459. [**Meetings of trustees; their expenses.**] (§ 4105-59.) Sec. 6. The board of trustees created under this act shall meet in regular session at said university twice a year; the first meeting shall be on the third Thursday in June, and the second on the first Thursday in November of each year; but other meetings may be held at such places and times as a majority of the board may determine. The said trustees shall receive no compensation, but shall be reimbursed their traveling and other reasonable and necessary expenses out of appropriations under this act. (89 v. 368; 84 v. 127.)

§ 460. [**Powers and duties of trustees.**] (§ 4105-60.) Sec. 7. It shall be the duty of said board of trustees created under this act to take, keep and maintain exclusive authority, directions, supervision and control over the operations and conduct of said normal and industrial department, so as to assure for it the best attainable results with the aid hereby secured to it from the state. Said board shall determine the branches of industry to be pursued, purchase, through a suitable and disinterested agent, the necessary means and appli-

ances, select a superintendent for the industrial branch of the department, fix his salary and prescribe his duties and authority. The expenditures of all moneys appropriated under this act for carrying out its purpose and provisions, shall be made only under such regulations and for such specific purposes not herein provided for, as the board of trustees of said department shall establish; but no money hereby appropriated by the state shall be used at any time for any purpose not in direct furtherance and promotion of the objects of the department. (84 v. 127.)

§ 461. [**Non-sectarian character of department.**] (§ 4105-61.) Sec. 8. No sectarian influence, direction or interference in the management or conduct of the affairs or education of said department shall be permitted by its board; but its benefits shall be open to all applicants of good moral character and within the limitations of age determined by said board. (84 v. 127.)

§ 462. [**Payment to university of state appropriations; bond of treasurer.**] (§ 4105-62.) Sec. 9. Upon the certificate of the board of trustees of said department that the necessary steps have been taken by the board of trustees of said university to co-operate with the department trustees in carrying out the purposes of this act by granting the use of its buildings, grounds and educational facilities, there shall be paid to the treasurer of said department, semi-annually, one-half of such amounts as may be annually appropriated by the general asesmby for the purposes therein named. The treasurer of said department shall give to the state of Ohio a bond to be approved by the attorney general in the sum of twenty thousand dollars, conditioned that he shall faithfully discharge his duties and account for any money coming into his hands from the state of Ohio. (92 v. 275; 84 v. 127.)

§ 463. [**Annual report, and estimate of appropriations.**] (§ 4105-63.) Sec. 10. The board of trustees shall cause to be made on or before the first day of December, eighteen hundred and eighty-eight (and) each year thereafter, a report to the governor of the condition, progress and results of said department, with an estimate of what appropriation shall be required to secure the objects of this act. (84 v. 127.)

§ 464. [**Designation of pupils by members of general assembly.**] (§ 4105-64.) Sec. 11. Each senator and representative of the general assembly of the state of Ohio may designate one or more youth resident of his district who shall be entitled to attend the said normal and industrial department free of tuition. (92 v. 275; 84 v. 127.)

§ 465. [**Appropriations; application of revenues.**] (§ 4105-65.) Sec. 12. For the purpose of carrying out the provisions of this act there shall be levied annually a tax on the grand list of taxable property of the state, which shall be collected in the same manner as other state taxes, and the proceeds of which shall constitute "the fund of the combined normal and industrial department at Wilberforce University." The rate of such levy shall be designated by the general assembly at least once in two years, and if the general assembly shall fail to designate the rate for any year, the same shall be for the said fund of the "combined normal and industrial department of Wilberforce University" two-hundredths of one mill upon each dollar valuation of such taxable property for the year 1900 and one-hundredth of one mill thereafter. The same shall be paid to the treasurer of the normal and industrial department at Wilberforce University in accordance with the provisions of section twelve of said act. All revenue arising from tuitions, sales of products or otherwise under the aforesaid department shall be applied by its board of trustees to defray its expenses, or to increase its inefficiency, a strict account of which shall be kept by the department board, and accompany the report to the governor. (94 v. 598; 92 v. 156; 84 v. 127.)

§ 466. [**Additional appropriations for Wilberforce University.**] (§ 4105-66.) Sec. 1. There is hereby appropriated out of any moneys in the treasury to the credit of the general revenue fund not otherwise appropriated, for combined normal and industrial department at Wilberforce University, two thousand dollars, the same being the balance due said institution under the provisions of an act passed March 19, 1887. And this amount shall be in full of all claims against the state by said university. (86 v. 392.)

CHAPTER 18.

STATE COMMISSIONER OF COMMON SCHOOLS.

SECTION.		SECTION.	
§ 467 (354)	State commissioner of common schools; election and term of; proviso.	§ 474 (361)	Annual report of commissioner of schools.
§ 468 (355)	Bond.	§ 475 (362)	What the report shall contain.
§ 469 (356)	His office; books and papers; prohibitions.	§ 476 (363)	Shall require reports from private schools, etc.
§ 470 (357)	His duties to teachers' institutes, etc.	§ 477 (364)	His duty on complaint of fraudulent use of money; appointment of examiner.
§ 471 (358)	His supervision over school funds and school officers.	§ 478 (365)	Powers, duties and compensation of examiner.
§ 472 (359)	Shall prepare and transmit forms and instructions.	§ 479 (366)	Duty of judge and prosecuting attorney.
§ 473 (360)	Shall cause school laws, with forms, etc., to be printed and distributed.		

§ 467. [State commissioner of common schools; election and term of; proviso.] (§ 354.) There shall be elected, biennially, at the general election for state officers, a state commissioner of common schools, who shall hold his office for the term of two years from the second Monday of July succeeding his election; and in case of a vacancy occurring by death, resignation or otherwise, the governor shall fill the same by appointment. (98 v. 272.)

§ 468. [His official bond, and oath.] (§ 355.) Before entering upon the discharge of his official duties, the commissioner shall give bond in the sum of five thousand dollars to the state, with two or more sureties, to the acceptance of the secretary of state, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, and that he will faithfully perform the duties enjoined upon him according to law; which bond, with his oath of office indorsed thereon, shall be filed with the treasurer of state. (70 v. 195, § 103; S. & C., 1362.)

§ 469. [Office; books and papers; prohibitions.] (§ 356.) The books and papers of his department shall be kept at the seat of government where a suitable office shall be furnished by the state, at which he shall give attendance not less than ten months in each year, except when absent on public duty; and he shall not, while holding the office of state commissioner of common schools, perform the duties of teacher or superintendent of any public or private school, or be employed as teacher in any college, or hold other office or position of emolument. (90 v. 13; 70 v. 195, § 104; S. & C., 1362.)

§ 470. [His duties in visiting the several judicial districts.] (§ 357.) The commissioner shall visit annually, each judicial district of the state, superintending and encouraging teachers' institutes, conferring with boards of education or other school officers, counseling teachers, visiting schools and delivering lectures on topics calculated to subserve the interests of popular education. (70 v. 195, § 105; S. & C., 1362.)

§ 471. [His supervision over school funds; may require reports from certain officers.] (§ 358.) He shall also exercise such supervision over the educational funds of the state as is necessary to secure their safety and right application and distribution according to law. He has power to require of county auditors, boards of education, clerks and treasurers of boards of education, or other local school officers, and county treasurers, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools and the management thereof as he deems important. (70 v. 195, § 106; S. & C., 1362.)

§ 472. [Shall prepare forms, etc.] (§ 359.) He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under the school laws, and cause the same, with such instructions as he deems necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. (70 v. 195, § 107; S. & C., 1363.)

§ 473. [Duties as to distribution of school laws, etc.] (§ 360.) He shall cause as many copies of the laws as are

necessary, relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals, and other documents, for the use of the school officers therein, as often as any change in the laws is made of sufficient importance, in the opinion of the commissioner, to require a republication and distribution thereof. (70 v. 195, § 108; S. & C., 1363.)

In reference to the weight that should properly be attached to the advice or forms given by a state commissioner of common schools, the circuit court in, *The State v. German Township*, 2 C. C., 366, has in substance said, that while such matters cannot have the force of the judicial interpretation, yet, whatever is said is entitled to great weight, as the opinion of the eminent educator, who is at the head of the school system of this state, and presumably familiar with the necessities of the schools, and the usefulness of the various articles. Especially is this true when it is remembered that he is required by law to prepare for the use of school officers throughout the state, a printed book containing matters referred to in the above statute. The question there was, as to what might constitute an apparatus within the meaning of section 3995 of the Revised Statutes and what might constitute furnishings for a school as contemplated under section 3987 (§ 95) of the Revised Statutes.

§ 474. [Annual report of commissioner of schools.] (§ 361.) He shall make an annual report, on or before the fifteenth day of November, to the general assembly, when that body is in session, and when not in session the report shall be made to the governor, who shall cause the same to be published, and shall also communicate a copy thereof to the general assembly at the beginning of the next session. (85 v. 192; Rev. Stat. 1880; 70 v. 195, § 109; S. & C., 1363.)

§ 475. [What it shall present.] (§ 475.) In his annual report he shall present a statement of the condition and amount of all funds and property appropriated to purposes of education; a statement of the number of common schools in the state, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of

teachers' institutes, and the number of teachers attending them, and the number of instructors and lecturers, and the amount paid to each; a statement of the estimates and accounts of the expenditures of the public school funds of every description; a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the state as he deems of importance. (70 v. 195, § 110; S. & C., 1363.)

§ 476. [Shall require reports from private schools, etc.] (§ 363.) He shall, annually, require of the president, manager, or principal of every seminary, academy, and private school, a report of such facts, arranged in such form as he prescribes, and shall furnish blanks for such reports; and it is made the duty of every such president, manager, or principal, to fill up and return such blanks within the time the commissioner directs. (73 v. 225, § 1.)

§ 477.- [Duties of commissioner on complaint of fraudulent use of money, etc.; appointment of accountant to investigate charges.] (§ 364.) When a complaint is made to the state commissioner of common schools, in writing, verified by the affidavits of at least three freeholders and taxpayers, resident of any school district in the state, and bearing the certificate of the auditor or auditors of the respective county, or counties, in which said district is located, that said affiants are freeholders and taxpayers, alleging that they have good reason to and do believe that any portion of the school fund of such district has been expended, or is being expended, contrary to law, or has been fraudulently, unlawfully, or corruptly used, or misapplied, by any of the officers of such district, or that there have been fraudulent entries in the books, accounts, vouchers, or settlement sheets thereof, by any such officers, or that any such officers have not made settlements of their accounts as required by law, or whenever from information filed in his office, or from other cause, the state commissioner of common schools may deem it necessary for the safety and security of the public funds of any school district, situated in the state of Ohio, he is authorized and required to appoint some trustworthy and competent accountant, for the

purpose of investigating such complaint, or allegations, who after being duly commisisoned by said state commissioner of common schools and sworn by any person authorized by law to administer oaths, shall forthwith visit such school district and take possession of all the books, papers, vouchers and accounts of such district and investigate the truth of the allegations of such complaint, and the condition of the school fund of such district; and the several officers of such school district, on the application of such examiner, shall immediately place in his possession all their books, accounts, contracts, vouchers, and other papers having reference to the receipts and disbursements of the school funds; and the county auditor and treasurer shall give such examiner free access to all the records, books, papers, vouchers, and accounts of their respective offices having reference to the object of such investigation, and said examiner is authorized, by and with the written consent of the prosecuting attorney, or the judge of the court of common pleas of the county in which such district is located, to require the assistance of the official stenographer of said county, in making such examination; and said stenographer shall receive only such compensation and in the manner provided in section 478, Revised Statutes, upon the certificate of the prosecuting attorney of said county. (94 v. 312; 72 v. 82, § 1.)

Complaint as to Fraudulent Comments.

Use of Money, etc.

Form of Complaint.

COMPLAINT AS TO FRAUDULENT USE OF MONEY, ETC.—The above statute places it within the hands of any three freeholders and taxpayers, residents of any school district, to bring to the attention of the state school commissioners any matter that they may believe is existing in their district, for which there has been an unlawful expenditure of school funds or where there is being any fraudulent, unlawful or misapplication of any of such funds or where officers have properly failed to perform their duty, incumbent upon them by virtue of the statute regulating the office which they hold. It should be observed, that the only requisite of this application is that it must be signed by at least three freeholders and taxpayers, residents of the school district, and must have attached to it a certificate of the auditor of

the county. After such complaint is received by the commissioner, it is his duty to appoint some trustworthy and competent accountant to investigate the matter charged in the complaint. Such official shall be sworn, and will have full authority to examine all books and accounts that he may deem proper in order that he may make a full and complete examination. The form of such complaint may be as follows:

Form of Complaint.

To the State Commissioner of Common Schools.

Sir:—I respectfully submit the following state of facts as existing in school district, county, Ohio:

(Statement of complaint containing one of the causes mentioned in section 364, R. S. (§ 477).)

In consideration of the above statement I respectfully request the appointment of some competent accountant to investigate the condition of the school funds of said district.

.....,
Complainant.

State of Ohio, County, ss.

I,, and do solemnly swear (affirm) that the statements made in the foregoing complaint are true to the best of my knowledge and belief.

Sworn to by, and, and subscribed in my presence this day of, 190..

.....,
(Title.)

I hereby certify that, and are freeholders and taxpayers, residents of school district.

.....,
County Auditor.

....., Ohio,, 190..

§ 478. [Powers and duties of examiner; his compensation; payment thereof.] (§ 365.) Such examiner shall have authority to call before him forthwith, upon written notice, and examine witnesses, under oath, to be administered by him; and he shall immediately after completing such investigation, report in writing, in duplicate, setting forth the condition of the books, vouchers, and accounts of such district, the amount of school funds received for any and all purposes, and from whatever source, the amount expended, and for what, and the amount actually in the treasury, one copy of which reports he shall file in the office of the clerk of the court of common pleas of the county in which such district is situate, and the other copy he shall transmit to the state commissioner of common

schools at Columbus; and the examiner so appointed and performing the duties herein required, shall receive as compensation a per diem of five dollars for each day necessarily engaged in the performance of his duties, and shall also receive five cents for each mile by him necessarily traveled in that behalf; but no mileage shall be allowed for a greater distance than from Columbus to such district; and such compensation and mileage shall be paid out of the county treasury upon the warrant of the county auditor, and if the investigation establish the truth of any material allegation in such complaint, then such amount so paid shall be assessed by the county auditor upon the taxable property of the district, to be collected as other taxes are for the use of such county treasurer. (94 v. 313; 72 v. 82, § 2.)

§ 479. [Adverse report of examiner to be given in charge to the grand jury; duty of prosecuting attorney.] (§ 366.) The judge of the court of common pleas of the proper county shall examine the report so filed in the clerk's office, as provided in section three hundred and sixty-five, and if it appear therefrom that any part of the common school fund has been fraudulently, unlawfully, or corruptly used or misapplied, or that there has been fraud in any of the entries, accounts, vouchers, contracts, or settlements, or that the settlements have not been made as required by law, or that there appears any defalcation or embezzlement on the part of any of the officers of such school district, he shall give the report specially in charge to the grand jury at the term of the court of common pleas next after the filing of the same; and the prosecuting attorney of such county shall forthwith institute and carry forward such proceedings, civil or criminal, or both, against the delinquent officer or officers of such district as is authorized by law. (72 v. 82, § 3.)

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PUBLIC SCHOOLS—HISTORICAL.

The words "public schools" is used synonymously with "common schools," and are meant to include schools created by law and maintained at public expense, and which are open to the children of all the inhabitants alike. They are supported by general taxation and under the control generally of the law-making body. The term "common" or "public schools" is likewise used to indicate the character of education had therein and it is generally meant to include schools that begin with the rudimentary elements of an education as contra distinguished from academies and universities devoted exclusively to teaching advanced pupils in the classics and in all the higher branches of study usually included in the curriculum of the colleges. A school that is carried on under a church organization could not be held to properly come within the ordinary meaning of "common schools." The idea that a person without reference to any special, practical end should be educated so as to better fit him for the ordinary duties of life seems to have occurred first to the Greeks, but it was not until after the Reformation that the thought became more prevalent, that every man's intellect should be trained so as enable him to be able to read, inquire, think and act for himself. During the period which is generally spoken of as the "dark ages" in Europe, the ignorance of the people generally was astounding and very few possessed the knowledge which enabled them to read and write. The ruling powers seemed rather to incourage this ignorance than attempt to enlighten their subjects with even an elementary education. This may have resulted largely from the fact that warfare seemed to them to be the principal object of life, and further, perhaps the rulers may have had an idea that an ignorant subject was more easily controlled than an educated one.

Within this period, however, two monarchs, whose names are familiar to all historical students, stand forth in bold relief. Charlemagne, while incapable of writing, himself, invited men of letters abroad to come and reside at his court and instruct himself and his family. He also established schools in various cities of his empire. Alfred the Great, of England, made similar efforts but his successors were not so much impressed with its importance, or were too much occupied with warfare to continue the educational work that he had begun.

The discussions and general interest in literature brought forth by the Reformation seems to have had the effect of bringing to the minds of the people the importance of educating the mind so that the individual might know how to better think and act for himself.

We find that in 1616 the Scotch Parliament adopted measures for establishing and supporting a public school in each parish at the expense of the land owners and proprietors. This legislation was repealed in the administration of Charles II., but was re-enacted by the Scotch Parliament in 1696.

In reference to the effect of this educational movement in Scotland, Lord Macauley says: "By this memorable law it was, in the Scotch phrase, statuted and ordained that every parish in the realm should provide a commodious school house and should pay a moderate stipend to a schoolmaster. The effect could not be immediately felt, but, before one generation had passed away, it began to be evident that the common people of Scotland were superior in intelligence to the common people of any other country in Europe. To whatever land the Scotchman might wander, to whatever calling he might betake himself, in America or in India, in trade or in war, the advantages which he derived from his early training raised him above his competitors. If he was taken into a warehouse as a porter, he soon became foreman. If he enlisted in the army he soon became a sergeant. Scotland, meanwhile, in spite of the barrenness of her soil and the severity of her climate, made such progress in agriculture, in manufactures, in commerce, in letters, in science, in all that constitutes civilization, as the Old World has never seen equalled, and as even the New World has scarcely seen surpassed.

"This wonderful change is to be attributed, not indeed solely, but principally to the national system of education."

At the present time every great power of the civilized world has adopted some system of public schools. Some are not upon the high plane or basis that would suit an American, but all show an advance in the world's thought upon this question. In the United States the earliest schools were established in the towns and this, no doubt, occurred by reason of the town government being better able to furnish such school facilities and also from the fact that the country settlements were sparsely inhabited.

The New England communities were the first to go on record in this matter, and the origin of these schools may properly be given, to Boston, Dorchester, Salem, Hartford and New Haven, and other of the older settlements. There is some evidence that prior to the time that the town ordered the establishment of schools that the people had by voluntary agree-

ments and associations employed teachers to instruct their children.

The vote or order of the colonial government generally followed that of the town organizations. In the Massachusetts colony it was seven years and in New Haven three.

In 1642 and 1647 the colony of Massachusetts passed laws in reference to the education of children which it may be said has been the basis of all succeeding requirements concerning education. In 1642 it was enacted that certain persons in each town should take account of the employment of children and especially of their ability to read and understand the capital laws.

The Act of 1647 required every town containing fifty householders to appoint a teacher to teach all such children as shall resort to it to write and read, and every town containing one hundred householders to set up a grammar school whose teacher should be able to instruct the youth so far as they be fitted for the university. They did not leave this matter to voluntary enforcement, but provided a penalty for non-compliance. At first the penalty was five pounds. In 1671 it was doubled, and in 1683 it was again doubled and afterwards increased.

The Connecticut colonists were not far behind Massachusetts, for within three years after the first log house was built, at New Haven, they had opened a public grammar school. Even previously there had been established a more elementary school.

In 1672, four county grammar schools had been established and endowed with 600 acres of land. Before the middle of the first century of its settlement every colony in New England, with the exception of Plymouth, had made education compulsory. The other colonies of the United States were much slower in establishing a general plan of education than the New England colonies.

Virginia for three generations after its settlement suffered a neglected education. The rulers of that colony certainly did not encourage such matters, for in 1671 Sir William Berkley, the governor for thirty-six years, wrote in reply to a question of the English Commissioners, "I thank God there are no free schools nor printing, and I hope we shall not have, these hundred years; for learning has brought disobedience and heresy, and sects into the world; and printing has divulged them from libels against the best government; God keep us from both." But Governor Berkley could not impede the onward march of civilization, and within five years after the above was written by him a citizen bequeathed six hundred acres, together with ten cows and one breeding mare, for the maintenance of a free school forever.

It seems that the colony of New Amsterdam, afterwards

known as New York, was about as slow to take up this matter as Virginia. The first schools there seems to have been under the control of the church.

In promoting education Pennsylvania was more in accord with New England than New York, and it has been said that before the pines had been cleared from the ground, William Penn and his comrades began to open up schools and setting up printing presses. The first school was opened in the first year of the colony, and in six years a free academy was established in Philadelphia. In various other settlements the matter of education was carried on in a different manner, but progressing generally along a line of betterment until the present time. The fifty years following the war of the revolution found the common schools much better supported by law and public opinion than previously.

The South, resulting, no doubt, largely from the system of slavery therein in vogue, was considerably slower in progress in this matter than the North.

In 1844, Governor Hammond, of South Carolina, in his message said, "The free school system has failed. Its failure is owing to the fact that it does not suit our people, our government, our institutions. The paupers for whose children it is intended, need them at home to work."

The condition of affairs in the South since the civil war has changed, and all the southern states now have a system of public school education.

While at first only education of an elementary character was included within the free school system, now those of a higher class are frequently included, and the tendency is to bring education of a manual character within the provisions of the public school system. Normal schools have likewise been established for the training of teachers in many states.

Ohio includes within its bounds settlements that were made by emigrants from the New England colonies as well as from Virginia, and before it became a separate territory the importance of a general education was firmly fixed in the minds of those in control of governmental affairs.

In 1785, the Congress of the confederation voted to reserve in the western territory lot number sixteen of every township for the maintenance of the public schools, and the ordinance of 1787, establishing a government of the territory of the United States, northwest of the Ohio River, in article three declares that "Religion, morality, and knowledge being necessary to a good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The Constitution of Ohio, 1802, in section twenty-five of the bill of rights provided "that no law shall be passed to prevent the board in the several counties and townships within

this state from an equal participation in the schools, academies, colleges and universities within this state which are endowed in whole or in part and from the revenue arising from donations made by the United States for the support of schools and colleges; all doors of the said schools, academies and universities shall be opened for the reception of scholars, students and teachers of every accord, without any distinction or preference whatever contrary to the intent for which said donations remain."

In the Constitution of 1851, section seven of the bill of rights, it is declared, "Religion, morality and knowledge, however, being essential to good government it shall be the duty of the General Assembly to pass suitable laws to protect their religious denominations in the peaceful enjoyment of its own public worship and to encourage schools and the means of instruction." And our Supreme Court has said, "That the system of public education in Ohio is the creature of the Constitution and statutory laws of the state."

The Constitution provides that it shall be the duty of General Assembly to pass suitable laws to encourage schools and the means of instruction, and again it provides that the General Assembly shall make such provision by taxation or otherwise as with the income arising from the school trust fund, shall secure a thorough and even system of common schools throughout the state. (Article six, section two.) It is left to the discretion of the General Assembly in the exercise of the general legislative power conferred upon it to determine what laws are suitable to secure and organize the management of the contemplated system of common schools without express restriction except that no religious or other sect or sects shall ever have any exclusive right to, or control of any part of the school fund of the state. Under these powers and acquirements of the Constitution the General Assembly has attempted to organize by suitable laws a system of common schools for the purpose of affording the advantages of the free education to all the youths of this state.

The present legislation and laws in reference to the school system of this state are embodied in the former part of this work. Many matters relating to the schools of this and other states detailing the kinds of schools, the amount of money expended, and salary of teacher will be found in the following pages of this appendix.

The general principles of common schools are well enunciated by a leading educator, Horace Mann, when he says, "Under our republican government, it seems clear that the minimum of education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will have to discharge; such an education as teaches the great

laws of bodily health, as qualifies for the fulfillment of parental duties; as is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal and in national affairs; and, finally, as is required for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great Republic."

OHIO STATISTICS.

SCHOOL DISTRICTS.

	1904.	1905.
City districts	71	70
Village and special districts.....	1,137	1,169
Township districts	1,331	1,316
Total number of districts.....	2,539	2,555
Subdivisions in township districts.....	10,953	10,281
[Table I.]		

SCHOOL HOUSES.

	1904.	1905.
Number Erected—		
Township districts	135	108
Separate districts	61	57
Totals	196	165
Cost of School Houses Erected—		
Township districts	\$201,323	\$ 436,016
Separate districts	907,847	1,507,703
Totals	\$1,110,170	\$1,943,719
Number of School Houses in the State—		
Township districts, Elementary	10,894	10,924
High	125	126
Total	11,019	11,050
Separate districts, Elementary.....	1,855	1,890
High	205	215
Total	2,060	2,105
Total Elementary	12,749	12,814
Total High	330	341
Grand Total	13,079	13,155

SCHOOL HOUSES—Continued.

	1904.	1905.
Number of School Rooms—		
Township districts, Elementary....	11,742	11,589
High	271	283
Total	12,013	11,870
Separate districts, Elementary.....	10,196	10,431
High	1,937	2,012
Total	12,133	12,443
Total Elementary	21,938	22,018
Total High	2,208	2,295
Grand Total	24,146	24,313
Value of School Property—		
Township districts, Elementary....	\$11,690,501	\$10,662,856
High	496,575	555,215
Total	\$12,187,076	\$11,218,071
Separate districts, Elementary.....	\$32,606,686	\$34,639,881
High	6,269,042	6,949,928
Total	\$37,875,728	\$41,589,809
Value of Elementary	\$44,297,187	\$45,302,737
Value of High	6,765,617	7,505,143
Total value	\$51,062,804	\$52,807,880

TEACHERS.

	1904.	1905.
Teachers Necessary to Supply Schools—		
Township districts, Elementary....	11,674	11,470
High	299	303
Total	11,973	11,773
Separate districts, Elementary.....	10,254	10,262
High	1,866	2,187
Total	12,120	12,449
Total Elementary	21,928	21,733
Total High	2,165	2,464
Grand total	24,093	24,197

TEACHERS—Continued.

				1904.	1905.
Different Teachers Employed—					
Township districts.	{	Elementary, Men		6,320	5,494
		Women...		7,140	6,859
		High, Men		224	252
		Women...		55	41
Total for townships.....				13,739	13,146
Separate districts.	{	Elementary Men		1,283	1,292
		Women...		9,483	9,846
		High, Men		1,267	1,328
		Women...		780	857
Total for separate.....				12,813	13,323
Total Elementary				24,226	23,991
Total High				2,326	2,478
Number of Men Employed.....				9,094	8,866
Number of Women Employed.....				17,458	17,603
Total Number Employed.....				26,552	26,469
Teachers Employed the Whole School Year—					
Township districts.	{	Elementary, Men		4,451	4,779
		Women...		53	44
		High, Men		224	240
		Women...		5,040	5,386
Total for townships.....				9,768	10,449
Separate districts.	{	Elementary, Men		1,169	1,257
		Women...		727	813
		High, Men		1,216	1,238
		Women...		8,892	9,078
Total for separate.....				12,004	12,386
Total Elementary				19,552	20,500
Total High				2,220	2,335
Number of Men.....				7,060	7,514
Number of Women.....				14,712	15,311
Total number				21,772	22,825
Average Monthly Wages Township Elementary Schools—					
Men				\$37 00	\$38 00
Women				34 00	37 00

TEACHERS—Continued.

	1904.	1905.
Township High Schools—		
Men	\$65 00	\$68 00
Women	47 00	50 00
Separate District, Elementary Schools—		
Men	46 00	50 00
Women	36 00	39 00
Separate District, High Schools—		
Men	77 00	79 00
Women	58 00	59 00
Average Number of Weeks Taught—		
Township districts, Elementary....	31	31
High	31	31
Separate districts, Elementary....	34	33
High	34	34

SCHOOL YOUTH.

	1904.	1905.	
Youth Between Six and Twenty-one—			
Township districts, Boys.....	224,554	218,704	
Girls	204,295	198,140	
Total	428,849	416,844	
Separate districts, Boys.....	424,982	437,865	
Girls	397,066	400,071	
Total	821,958	837,936	
Number of Boys.....	641,186	656,569	
Number of Girls.....	609,621	598,211	
Total number of school youth..	1,250,807	1,254,780	
Different Pupils Enrolled—			
Township districts. {	Elementary, Boys	175,809	169,986
	Girls	158,327	155,205
	High, Boys	2,841	2,291
	Girls	3,010	3,152
Total in townships.....	339,987	331,334	
Separate districts. {	Elementary, Boys	225,204	226,103
	Girls	218,635	212,206
	High, Boys	22,936	24,695
	Girls	28,845	30,610
Total in separate.....	495,210	493,614	

SCHOOL YOUTHS—Continued.

		1904.	1905.
Number in Elementary.....		777,975	763,500
Number in High.....		57,632	60,748
Number of Boys.....		426,790	423,075
Number of Girls.....		408,817	403,073
Total enrollment		835,607	824,948
Per Cent. of Total Enrollment on Enumeration—			
Township districts		76	77
Separate districts		78	78
Re-Enrollment—			
Township districts	Elementary, Boys	8,934	8,405
	Girls	8,341	7,827
	High, Boys	53	43
	Girls	10	61
Total in townships.....		17,438	16,336
Separate districts.	Elementary, Boys	7,429	7,815
	Girls	6,818	6,720
	High, Boys	364	310
	Girls	433	325
Total in separate.....		15,044	15,170
Number in Elementary.....		31,522	30,767
Number in High.....		860	739
Number of Boys.....		16,780	16,573
Number of Girls.....		15,602	14,933
Total re-enrollment		32,482	31,506
Daily Attendance—			
Township districts.	Elementary, Boys	114,616	113,105
	Girls	108,594	108,125
	High, Boys	2,071	2,325
	Girls	2,440	2,769
Total in townships.....		227,721	226,324
Separate districts.	Elementary, Boys	176,646	175,806
	Girls	171,061	172,014
	High, Boys	18,774	23,594
	Girls	24,293	26,169
Total in separate.....		390,774	397,383

SCHOOL YOUTHS—Continued.

	1904.	1905.
Number in Elementary.....	570,917	569,050
Number in High.....	47,578	54,857
Number of Boys.....	312,107	314,830
Number of Girls.....	306,388	309,077
Total daily attendance.....	618,495	623,707

BRANCHES OF STUDY.

	1904.	1905.		1904.	1905.
Orthography	723,207	719,423	Trigonometry	691	661
Reading	749,770	739,101	Surveying	16	110
Writing	723,948	768,026	Literature	35,391	42,109
Arithmetic	724,851	72,499	Chemistry	3,076	3,466
Geography	438,592	432,574	Geology	1,466	1,848
Grammar	239,649	233,468	German	58,200	50,648
Language Lessons.....	414,839	414,364	Astronomy	1,284	1,638
U. S. History.....	238,699	259,002	Bookkeeping	7,123	8,199
General History...	16,413	20,979	Phonography	971	1,304
Drawing	361,867	370,811	Natural History....	3,997	4,013
Vocal Music	430,779	434,660	Psychology	1,103	1,504
Map Drawing	177,232	169,880	Logic	231	314
Physical Geog'phy	85,157	23,762	Rhetoric	18,983	18,355
Physics	10,173	9,955	Science of Govt....	16,165	16,058
Physiology	273,083	337,885	Political Economy..	1,728	2,275
Botany	11,229	10,907	Latin	30,101	32,469
Algebra	39,014	40,701	Greek	572	870
Geometry	15,101	16,455	French	1,830	1,352

HIGH SCHOOLS.

	1904.	1905.
Number of High Schools—		
Township districts	285	197
Separate districts	580	611
Total	865	808
Number of Superintendents Giving One-Half or More of Their Time to Supervision—		
Township districts	85	71
Separate districts	216	339
Total	301	410

HIGH SCHOOLS—Continued.

	1904.	1905.
Withdrawals from High Schools—		
Township districts, Boys.....	477	515
Girls	353	398
Total in townships.....	830	913
Separate districts, Boys.....	3,721	4,835
Girls	3,516	4,078
Total in separate.....	7,237	8,913
Number of Boys.....	4,198	5,350
Number of Girls.....	3,869	4,476
Total withdrawals	8,067	9,826
Pupils Remaining in High Schools at End of Year—		
Township districts, Boys.....	2,165	3,593
Girls	2,561	3,941
Total in townships.....	4,726	7,534
Separate districts, Boys.....	17,624	17,780
Girls	23,466	24,082
Total in separate.....	41,090	41,862
Number of Boys.....	19,789	21,373
Number of Girls.....	26,027	28,023
Total remaining	45,816	49,396
Number of Graduates—		
Township districts, Boys.....	377	405
Girls	462	563
Total in townships.....	839	968
Separate districts, Boys.....	2,476	2,605
Girls	3,833	4,159
Total in separate.....	6,309	6,764
Number of Boys.....	2,853	3,010
Number of Girls.....	4,295	4,722
Total graduates	7,148	7,732
Whole Number of Graduates in History of Schools—		
Township districts, Boys.....	2,167	2,619
Girls	2,643	3,486
Total in townships.....	4,908	6,105

HIGH SCHOOL—Continued

	1904.	1905.
Separate districts, Boys.....	31,287	31,766
Girls	58,684	59,165
Total in separate.....	90,560	90,931
Number of Boys.....	33,454	34,385
Number of Girls.....	61,327	62,651
Total graduates	94,781	97,036
Number of Township Graduates for Whom Tuition is Paid—		
Boys	2,037	2,218
Girls	2,142	2,538
Total	4,179	4,756
Number of volumes in school libraries..	564,546	603,471
Number of Centralized Township Schools as Reported by County Auditors.....	58	82
[Table XIII, a, b, c.]		

SCHOOL TAXES.

	1904. Mills.	1905. Mills.
State tax	1.00	1.00
Average Local Tax—		
Township districts	6.04	6.23
Separate districts	8.97	8.92

RECEIPTS.

	1904.	1905.
Balance on hand at beginning of year..	\$ 8,128,159 36	\$ 8,879,419 39
State tax	1,858,228 21	1,903,646 94
School lands	246,455 59	261,696 94
Local tax	14,707,113 69	15,143,665 98
Sale of bonds.....	1,081,505 11	1,499,255 88
Fines, licenses, tuition, etc.....	1,027,004 89	1,481,985 52
Total receipts	\$18,920,306 49	\$20,290,251 26
Grand total, including balances....	\$27,048,465 85	\$29,169,670 65

EXPENDITURES.

	1904.	1905.
Paid teachers	\$10,071,050 51	\$10,653,940 90
Paid for superintendency.....	486,858 78	524,682 94
Paid for sites and buildings.....	1,179,178 79	1,840,115 17
Paid for int. and redemption of bonds..	1,162,642 79	1,422,347 68
Paid for contingent expenses.....	4,064,914 37	4,576,352 43
Total expenditures	\$17,564,645 73	\$19,017,339 12
Balance on hand at end of year.....	\$ 9,483,820 12	\$11,358,366 60

STATE EXAMINATIONS.

	1904.	1905.
Certificates Granted—		
High school life.....	36	82
Common school life.....	68	37
Special	2	5
Total granted	106	124

COUNTY EXAMINATIONS.

	1904.	1905.
Number of Applicants—		
Men	16,916	16,008
Women	23,743	23,446
Total	40,659	39,454
Applications Rejected—		
Men	7,360	6,358
Women	11,041	10,617
Total	18,401	16,975
Number of Certificates Granted—		
Men	9,351	9,243
Women	12,361	11,996
Total	21,712	21,239
Number of Different Applicants—		
Men	10,574	10,364
Women	14,758	14,788
Total	25,332	25,152

COUNTY EXAMINATIONS—Continued.

	1904.	1905.
Different Persons Who Received Certificates—		
Men	7,962	8,240
Women	10,733	10,583
Total	18,695	18,823
Cost of County Examinations—		
Paid examiners	\$38,889 00	\$42,168 59
Paid for all other purposes	15,174 77	17,333 53
Total cost	\$54,063 77	\$59,502 12
Fees paid into county treasury.	20,506 30	19,598 10
Excess of expenditures over receipts	\$33,557 47	\$38,653 80

SEPARATE DISTRICT EXAMINATIONS.

	1904.	1905.
Number of Applicants—		
Men	332	558
Women	3,980	4,435
Total	4,312	4,993
Applicants Rejected—		
Men	20	45
Women	344	995
Total	364	1,040
Certificates Granted—		
Men	291	520
Women	3,479	5,111
Total	3,770	5,631
Cost of Separate Dist. Examinations—		
Paid examiners	\$7,318 20	\$7,581 24
Paid for all other purposes	1,504 21	1,702 89
Total cost	\$8,822 41	\$9,284 13

EXAMINATIONS FOR TOWNSHIP PUPILS' GRADUATION.

	1904.	1905.
Number Examined—		
Boys	7,120	9,193
Girls	9,179	11,605
Total	16,299	20,798
Number Who Passed—		
Boys	2,834	2,477
Girls	3,729	3,018
Total	6,563	5,495
Number Receiving Diplomas—		
Boys	2,789	2,461
Girls	3,691	3,010
Total	6,480	5,471
Cost of Examinations—		
Paid examiners	\$11,059 30	\$11,183 00
Paid for all other purposes	4,563 60	5,162 93
Total cost	\$15,746 90	\$16,345 93
Number of townships in the state	1,366	1,366
Number of townships sending applicants	1,134	1,152
Number of township high schools, as reported by boards of examiners	245	239

TEACHERS' INSTITUTES.

	1904.	1905.
Number of county institutes held	88	88
Number of days in session	461	437
Number in Attendance—		
Men	6,777	6,135
Women	11,178	10,060
Total	17,955	16,195
Receipts—		
From county treasury	\$22,341 13	\$23,545 57
From members	6,325 75	6,744 24
From all other sources	2,780 96	1,712 57
Total	\$31,447 84	\$32,002 38
Expenditures—		
Paid lecturers and instructors	\$20,255 92	\$21,043 02
Paid for all other purposes	7,608 33	7,308 47
Total	\$27,864 25	\$28,351 49
Returned to county treasury	3,180 00	3,770 03

INSTITUTE FUND.

	1904.	1905.
Receipts—		
Balance at beginning of school year	\$ 5,317 44	\$ 7,024 01
Examination fees and other sources	24,041 18	22,888 58
Total.	\$29,358 62	\$29,912 59
Expenditures—		
Paid for support of institute.....	\$22,345 98	\$24,694 89
Paid treasurers' fees.....	473 67	110 98
Total	\$22,819 65	\$24,805 87
Balance at end of year.. . . .	6,538 97	5,348 52

COLLEGES AND UNIVERSITIES.

Names.	Year of Founding.	Locations.	Presidents.	Number of Instructors.
Antioch College	1852	Yellow Springs	S. F. Weston....	9
Ashland College	1878	Ashland	J. A. Miller.....	15
Buchtel College	1870	Akron	A. B. Church.....	17
Capital University	1850	Columbus	L. H. Schuh.....	11
Case School of Applied Science	1881	Cleveland	Charles S. Howe.	30
Defiance College.....	1884	Defiance	P. W. McReynolds	13
Dennison University....	1831	Granville	Henry W. Hunt..	35
Heidelberg University...	1850	Tiffin	C. E. Miller.....	17
Hiram College.....	1867	Hiram	C. C. Rowlinson..	21
Kenyon College.....	1834	Gambier	Wm. F. Pierce...	26
Lake Erie College.....	1856	Painesville ...	Mary Evans	18
Marietta College.....	1835	Marietta	Alfred T. Perry..	25
Miami University.....	1809	Oxford	Guy P. Benton...	27
Mt. Union College.....	1846	Alliance	A. B. Riker.....	27
Muskingum College.....	1837	New Concord..	J. K. Montgomery	15
Oberlin College.....	1833	Oberlin	Henry C. King..	94
Ohio State University....	1870	Columbus	W. O. Thompson..	140
Ohio University.....	1804	Athens	Alston Ellis	42
Ohio Wesleyan University	1844	Delaware	Herbert Welch...	132
Otterbein University....	1847	Westerville ..	Louis Bookwalter	30
St. Ignatius College.....	1886	Cleveland	John I. Zahm....	20
University of Cincinnati.	1870	Cincinnati ...	Chas. W. Dabney	161
University of Wooster....	1870	Wooster	Louis E. Holden..	29
Urbana University	1850	Urbana	John H. Williams	6
Western Reserve Univer- sity	1826	Cleveland	Chas. F. Thwing.	200
Wilmington College	1870	Wilmington ...	Albert J. Brown..	7
Wittenberg College	1845	Springfield ...	Chas. G. Heckert.	19
Total .....	.....	.....	.....	1,186

COLLEGES AND UNIVERSITIES.

Names	Whole No. of Graduates Since the Founding of Institution		Number of Students from States Other than Ohio		Number of Weeks in School Year	Expenses of Students per Year Not Including Board
	Men	Women	Men	Women		
Antioch College	174	87	1	.....	36	\$ 47
Ashland College	79	32	33	16	39	33
Buchtel College	189	143	1	2	38	47
Capital University .....	.....	.....	.....	.....	40	46
Case School of Applied Science	547	.....	51	.....	36	135
Defiance College .....	.....	.....	.....	.....	40	35
Dennison University .....	.....	.....	37	21	36	100
Heidelberg University .....	.....	.....	8	2	36	51
Hiram College	395	148	31	8	38	48
Kenyon College .....	.....	.....	32	.....	39	160
Lake Erie College .....	.....	.....	.....	21	35	100
Marietta College	841	45	13	2	38	50
Miami University .....	.....	.....	.....	.....	40	50
Mt. Union College	697	129	5	3	38	70
Muskingum College	301	133	16	11	38	50
Oberlin College	1,732	1,790	.....	.....	36	75
Ohio State University.....	.....	.....	.....	.....	38	18
Ohio University	516	76	5	5	38	15
Ohio Wesleyan University.....	.....	.....	72	70	35	54
Otterbein University	435	204	19	18	38	42
St. Ignatius College.....	9	.....	.....	.....	40	60
University of Cincinnati.....	.....	.....	.....	.....	36	100
University of Wooster.....	919	364	38	35	36	50
Urbana University	35	10	1	1	36	36
Western Reserve University...	.....	.....	.....	.....	36	110
Wilmington College .....	.....	.....	4	1	38	40
Wittenberg College	699	122	18	7	37	53
Total.....	7,568	3,283	385	223	.....	.....

HIGHER EDUCATIONAL INSTITUTIONS OTHER THAN COLLEGES.

Names.	Year of Founding.	Locations.
ACADEMIES AND PREPARATORY SCHOOLS.		
Bartholomew-Clifton School.....	1876	Cincinnati
Cedarville College	1887	Cedarville
Central Mennonite College.....	1900	Bluffton
Damascus Academy	1875	Damascus
Doane Academy	1831	Granville
Educational Institute	1894	Avondale
Franklin School	1880	Walnut Hills
German Wallace College.....	1863	Berea
Grand River Institute.....	1831	Austinburg
Hathaway-Brown School	1886	Cleveland
Hebrew Union College.....	1875	Cincinnati
Lake Erie College.....	1859	Painesville
Ohio Military Institute.....	1890	College Hill.....
Ohio University	1804	Athens
Otterbein Academy	1847	Westerville
Mt. Union College.....	1846	Alliance
Mt. Vernon College.....	1893	Mt. Vernon.....
Savannah Academy	1856	Savannah
Shauck's College	1891	Dayton
University of Cincinnati.....	1886	Cincinnati
University School	1890	Cleveland
University School	1889	Columbus
NORMAL SCHOOLS.		
Cleveland Normal School.....	1872	Cleveland
Dayton Normal School.....	1870	Dayton
Fayette Normal University.....	1888	Fayette
J. P. Kuhn's Normal School.....	1865	New Philadelphia
Ohio Northern University.....	1871	Ada
Mt. Union College.....	1858	Alliance
National Normal University.....	1855	Lebanon
Columbus Normal School.....	1883	Columbus
N. E. Ohio Normal College.....	1881	Canfield
Ohio State Normal College.....	.....	Oxford
Ohio University Normal School.....	1902	Athens

Names.	Year of Founding.	Locations.
SCHOOLS FOR GIRLS.		
Miss Butler's School.....	1892	Walnut Hills
Madam Fredin's School.....	1881	Walnut Hills
Glendale College	1854	Glendale
Oxford College	1849	Oxford
Miss Mittleberger's School.....	1876	Cleveland
Miss Phelps' School.....	1884	Columbus
Miss Sattler's School.....	1894	Cincinnati
Shepardson College	1832	Granville
Western College for Women.....	1855	Oxford
Western Reserve Seminary.....	1828	West Farmington.....
THEOLOGICAL SEMINARIES.		
Heidelberg Theological Seminary....	1850	Tiffin
Lane Theological Seminary.....	1829	Cincinnati
Union Biblical Seminary.....	1871	Dayton
Wittenberg Theological Seminary....	1845	Springfield
Xenia Theological Seminary.....	1794	Xenia
PROFESSIONAL SCHOOLS.		
Eclectic Medical Institute.....	1845	Cincinnati
Cleveland Col. Phys. and Surgeons...	1863	Cleveland
Ohio Medical University.....	1890	Columbus
Pulte Medical College.....	1872	Cincinnati
Starling Medical College.....	1847	Columbus
University Cincinnati	1819	Cincinnati
Western Reserve University.....	1843	Cleveland
Cincinnati College Dental Surgery...	1893	Cincinnati
Ohio College Dental Surgery.....	1845	Cincinnati
Dental Col. Ohio Med. Univ.....	1890	Columbus
Cincinnati College Pharmacy.....	1850	Cincinnati
Cleveland School of Pharmacy.....	1882	Cleveland
Cincinnati Law School.....	1833	Cincinnati
Cleveland Law School, Baldwin Univ.	1897	Cleveland
Law School of O. S. U.....	1891	Columbus
Law School of W. R. U.....	1892	Cleveland
Total.....	.....	.....

COMPARATIVE STATISTICS.

SCHOOL PROPERTY.

Year.	Total value.	Amount expended annually.
1894.....	\$390,173 84	\$133,142 06
1895.....	389,258 96	138,051 05
1896.....	401,759 75	137,571 09
1897.....	400,433 12	137,127 29
1898.....	414,282 89	135,598 49
1899.....	414,468 38	135,969 43
1900.....	440,171 79	142,669 73
1901.....	461,820 62	151,296 75
1902.....	482,579 61	164,632 16
1903.....	500,066 48	167,400 04
1904.....	510,628 04	175,646 45

YOUTH OF SCHOOL AGE IN OHIO.

Year.	Enumeration.	Enrollment.	Attendance.
1894.....	1,147,210	809,780	583,599
1895.....	1,159,258	817,490	593,465
1896.....	1,173,119	820,560	597,925
1897.....	1,173,237	825,650	607,304
1898.....	1,198,704	837,152	618,667
1899.....	1,209,735	828,500	613,337
1900.....	1,226,366	829,160	616,365
1901.....	1,219,919	829,857	610,622
1902.....	1,245,393	832,044	617,069
1903.....	1,243,791	829,620	614,305
1904.....	1,250,807	835,607	618,495

TEACHERS' WAGES.

Year.	TOWNSHIP DISTRICTS.		High.	
	Elementary.		Men.	Women.
	Men.	Women.		
1893.....	\$37	\$28	\$61	\$40
1894.....	37	29	66	45
1895.....	36	29	65	49
1896.....	35	29	63	42
1897.....	35	29	62	43
1898.....	34	30	60	42
1899.....	34	31	57	40
1900.....	34	31	57	43
1901.....	35	32	58	43
1902.....	35	33	61	45
1903.....	37	34	63	44
1904.....	37	34	65	47

TEACHERS' WAGES.

SEPARATE DISTRICTS.

Year.	Elementary.		High.	
	Men.	Women.	Men.	Women.
1893.....	\$59	\$45	\$79	\$71
1894.....	59	46	79	73
1895.....	64	47	79	83
1896.....	67	47	80	75
1897.....	57	47	80	77
1898.....	43	34	68	57
1899.....	42	35	66	55
1900.....	43	34	64	55
1901.....	43	35	66	56
1902.....	45	35	67	58
1903.....	46	36	73	58
1904.....	46	36	77	58

COUNTY EXAMINATIONS.

Year.	Applicants.		Certificates Granted.	
	Men.	Women.	Men.	Women.
1893.....	19,045	20,658	10,841	10,568
1894.....	21,860	22,660	11,407	10,691
1895.....	22,929	23,139	11,496	10,618
1896.....	22,841	22,688	11,407	10,741
1897.....	22,454	21,410	11,575	10,061
1898.....	22,656	21,990	11,769	10,498
1899.....	22,032	21,873	11,794	10,697
1900.....	20,429	21,805	10,821	10,721
1901.....	19,119	21,786	10,344	10,857
1902.....	17,687	22,242	9,630	11,442
1903.....	15,722	21,862	8,908	11,286
1904.....	16,916	23,743	9,351	12,361

DISTRICT EXAMINATIONS.

Year.	Applicants.		Certificates Granted.	
	Men.	Women.	Men.	Women.
1893.....	279	3,007	282	2,669
1894.....	354	3,238	320	2,792
1895.....	402	3,698	361	2,831
1896.....	411	3,731	328	3,199
1897.....	406	4,180	354	3,457
1898.....	434	4,129	389	3,648
1899.....	391	3,959	356	3,497
1900.....	446	3,841	419	3,345
1901.....	427	3,907	368	3,261
1902.....	373	3,802	360	3,723
1903.....	404	3,713	374	3,365
1904.....	332	3,980	291	3,479

TEACHERS EMPLOYED.

Year.	Township Districts.		Separate Districts.	
	Men.	Women.	Men.	Women.
1893.....	8,855	8,126	1,609	6,922
1894.....	8,435	7,446	1,721	7,302
1895.....	8,462	7,155	1,804	7,583
1896.....	8,389	6,994	1,916	7,881
1897.....	8,342	6,817	1,974	8,083
1898.....	8,284	6,572	2,074	8,326
1899.....	8,206	6,511	2,350	8,645
1900.....	8,072	6,586	2,430	8,929
1901.....	7,821	6,688	2,476	9,305
1902.....	7,388	6,889	2,525	9,608
1903.....	7,005	7,134	2,556	9,956
1904.....	6,544	7,195	2,550	10,263

STATE BOARD OF SCHOOL EXAMINERS.

The Ohio State School Board of Examiners issues the following circular of information to persons desiring to become applicants for state certificates:

I. Three classes of Life Certificates are issued, viz.: Common School, High School and Special Certificates in Penmanship, Drawing, Music, or Physical Culture.

II. Applicants for Common School Certificates will be examined in Orthography, Reading, Writing, Arithmetic, Algebra, Geography, English Grammar and Composition, History of the United States, including Civil Government, General History, English Literature, Physiology and Hygiene, including effects of Alcohol and Narcotics, Physics, Theory and Practice of Teaching, Scientific Temperature, and such other branches, if any, as they may elect.

III. Applicants for High School Certificates, in addition to the above named branches, will be examined in Geometry, Rhetoric, Civil Government, Latin, Psychology, History of Education, Science of Education. Also three branches selected from the following: Chemistry, Botany, Zoology, Geology, Astronomy, Trigonometry and its Applications, Logic, Greek, German and Political Economy. The Board advises applicants not to attempt to pass an examination for the Common and High School Certificate at the same examination.

IV. Applicants for Special Certificates will be examined in Special Branches and in addition thereto in Physiology and Hygiene, including effects of Alcohol and Narcotics, Psychology, History of Education and Science of Education prescribed for applicants for High School Certificates.

V. The standard for Certificates is as follows: Minimum grade for Common School Branches, 60; average grade, 80; minimum grade for High School branches, 80.

VI. All applicants for Certificates must file with the Clerk of the Board, at least *thirty days* before the date of examination, an application blank filled out and two satisfactory testimonials that they have had at least *fifty months' experience* in teaching, and for Special Certificates at least *fifty months' experience* in teaching the Special branches. These testimonials should be from educators well known to the Board.

VII. The holder of a Common School Certificate may receive a High School Certificate by passing examination, at one meeting of the Board, in all the additional branches, as above stated, and furnishing satisfactory evidence of continued success in teaching.

VIII. No branch will be added to a Common School Certificate after the date of its issue; but, when issued, such certificate shall name the additional branches, if any, upon which the applicant has passed a satisfactory examination.

IX. As an essential condition of granting a Certificate of either grade, the Board will require evidence that the applicant has had marked success as a teacher, and has a good knowledge of the science and art of teaching.

Eminent attainments in any particular line of study will receive due consideration in determining an applicant's qualifications.

X. Each applicant for a Certificate shall pay the Board of Examiners a fee of five dollars at the opening session of the examination, and the Treasurer of the Board shall pay to the State Treasurer all fees received.

The following text-books will furnish a good preparation for examination in the subjects named:

PSYCHOLOGY.

Required—James' Briefer Course in Psychology (Holt); Ladd's Psychology, Descriptive and Explanatory (Scribner's); John Dewey's Psychology (American Book Co.).

Recommended—Bowne's Introduction to Psychological Theory (Harper's); Gordy's New Psychology (Hinds and Noble); Halleck's Psychology and Psychic Culture (American Book Co.).

HISTORY OF EDUCATION.

Required—Compayre's History of Pedagogy (Heath); Quick's Educational Reformers (Appleton); Painter's History of Education (Appleton).

Recommended—Krusi's Life of Pestalozzi (American Book Co.); Aristotle and Froebel of "Great Educator Series" (Scribner's); Seeley's History of Education (American Book Co.).

SCIENCE OF EDUCATION.

Required—White's School Management (American Book Co.); Lange's Apperception (Heath); Rozenkranz's Philosophy of Education (Appleton); Hinsdale's Art of Study (American Book Co.).

Recommended—DeGarmo's Essentials of Method (Heath); White's Art of Teaching (American Book Co.); Page's Theory and Practice (American Book Co.).

STATE EXAMINATION QUESTION.

JUNE, 1905.

LATIN.

1. Translate into good English:

Si quid est in me ingenii, iudices, quod, sentio, quam sit exiguum, aut si qua exercitatio dicendi, in qua me non infitior mediocriter esse versatum aut si hujusce rei ratio aliqua ob optimarum artium studiis ac disciplina profecta, a qua ego nullum confiteor aetatis meae tempus abhorruisse; earum rerum omnium vel in primis hic A. Licinius fructum a me repetere prope suo jure debet. Nam quod longissime potest mens mea rsepicere spatium praeteriti temporis et pueritiae memoriam recordari ultimam, inde usque repetens hunc video mihi principem et ad suscipiendam rationem horum studiorum exstitisse.

2. Give construction of sit, dicendi, debet, and exstitisse.
3. What can you say of Caesar's style? Of Cicero's? Name some writings of each author. Give in good Latin: (a) He says that grain is being brought together in the fields; (b) Paul, when he was blind, remained at Damascus many days.

4. Translate into Latin:

- (a) I did not conceal from you the conversation.
- (b) He fortified the hill before it was perceived.
- (c) Give a short sketch of the life of Virgil.

5. Translate:

Mecum erit iste labor. Nunc qua ratione, quod instat.
Conferi possit, paucis, adverte, docebo.
Venatum Aeneas unaque miserrima Dido.
In nemus ire parant, ubi primos crastinus ortus.
Extulerit Titan, radiisque retexerit orbem.

Give syntax of ratione, paucis and venatum.

6. Translate the following:

Brevi spatio *interjecto*, vix ut iis rebus, quas constituissent, *collocandis* atque administrandis tempus *daretur*, hostes ex omnibus partibus signo dato decurrere, lapides gaesaeque in vallum conjicere. Nostri primo integris viribus *fortiter* repugnare neque ullum frustra telum ex loso superiore mittere, ut quaeque pars castrorum nudata defensoribus premi videbature, eo occurrere et auxilium *ferre*, sed hoc superari, quod diuturnitate pugnae hostes defessi proelio *excedebant*, alii integris viribus succedebant; quarum rerum a nostris propter paucitatem fieri nihil poterat, ac non modo defesso ex pugna *excedendi*, sed ne saucio quidem ejus loci, ubi constiterat, relinquendi ac sui recipiendi facultas debatur.

7. Parse the italicized words.

8. What Latin have you read, and under what teachers was the work done? What pronunciation do you teach? Give three good reasons for the study of Latin.

GRAMMAR AND COMPOSITION.

1. State some of the common defects in teaching language.
2. Name the different participles; state how they are formed and governed.
3. State the origin of the word *its*. Give the rule for the use of *would* and *should*.
4. Define mode. Distinguish the different modes in English, giving illustrations.
5. Give the grammatical function of each word:
 "I had rather go than stay."
 In what cases or conditions may *as* be regarded a relative?
6. Define case, government in grammar, substantive, verbal and idiom.
7. Parse words in italics:
 *"And now depart! and when
 Thy heart is heavy, and thine eyes are dim,
 Lift up thy prayer beseechingly to Him
 Who from the tribes of men,
 Selected thee to feel His chastening rod."*
8. How many divisions of grammar do you make? Why? Define each. Give examples of reciprocal pronouns.
9. Give briefly your plan for composition work.
10. Diagram:
6. Name the masterpieces of the following and state when and where they were first performed: Handel, Hayden, Wagner.
 Whether the author knows it or not, he writes in order to exhibit his ideas of nature and of life; and the characters which he fashions, like the events which he arranges, only serve to bring to light the dim creative conception which raises and combines them.

MUSIC.

1. Write in the treble clef one octave of the under-mentioned scales (ascending) and their signatures: (a) G minor, with minor 6th and major 7th. (b) C sharp minor, with major 6th and major 7th.
2. Write in the treble clef the following key signatures, and state for what major keys they also stand: G minor, F sharp minor and D minor.
3. Write in the treble clef the following chromatic (ascending and descending) scales, G flat and F sharp.
4. State the meaning of the following terms, etc.: Vivace, Legato, Dolce, Calando, Dominant, Major Scale.
5. Give the names of the composers of the following operas: The Marriage of Figaro, The Barber of Seville, Tannhauser, Carmen, Fidelio.

CHEMISTRY.

1. What are acids, bases and salts? How is the name of salt derived from that of an acid? What are the elements found in alcohol, and what is the per cent. of each therein?
2. What are substances necessary to prepare laughing gas, and what is the process of preparation? If you have a liter of gas at 0°, what will it become at 30°?
3. Define valence, molecule and atom. What is the law of multiple proportions? Illustrate by an example. Name the characteristic properties of iodine, hydrogen, and potassium.

4. Define chemism, nascent-state, isomerism, phosphorescence and quantivalence. Represent the reaction showing the manufacture of chlorine from manganese dioxide.
5. Define the terms affinity, element, halogen, radical, valence. What is a chemical equation? Distinguish between volatile and fixed oils. What is the chemical composition of dynamite?

BOOKKEEPING.

- 1-5. Make entries in cash book and journal of the following transactions for double entry bookkeeping. (Cash items are to be entered in cash book only):
 - Jan. 2, 1905. Began a general provision business in Columbus with cash \$2000 and merchandise \$5780.
 - Jan. 3. Bought for cash, furniture and books for office use \$175.
 - Jan. 5. Bought of J. W. Young on account 160 barrels of flour @ \$3.85; 480 bushels potatoes @ 70c; 225 pounds lard @ 9c.
 - Jan. 6. Sold William Watson on account 125 bushels potatoes @ 74c.
 - Jan. 7. Paid J. W. Young \$225 by check on Farmers' Bank. Cash sales \$840.25.
 - Jan. 8. Sold John Peters 10 barrels flour @ \$4.20; 75 pounds lard @ 11c.
 - Jan. 9. Bought of George Hinde on account 525 pounds butter @ 20c.; 250 pounds lard @ 8c.
 - Jan. 10. Sold J. G. Albers, Marion, 150 bushels potatoes @ 75c.; 45 barrels flour @ \$4.25. Terms 2% off 5 days, net 30 days.
 - Jan. 12. William Watson remits Henry Smith's note for \$75, payable to Watson's order, at 30 days, in part payment of bill of Jan. 6.
 - Jan. 15. Received New York draft from J. G. Albers in payment of his bill of Jan. 10, less discount.
 - Jan. 16. Bought for cash 5 tons coal @ \$7.25 for heating store. Cash sales \$483.92.
 - Jan. 17. Sent George Hinde draft at 10 days on Peter Lawrence in payment of his bill of Jan. 9.
- 5-6. Post to the double entry ledger all items given in questions 1-5.
7. Make from the ledger called for in questions 5-6 a trial balance and statement of the condition of the business, assuming that the inventories are merchandise \$5250 and furniture and fixtures \$160.
8. Write (a) check mentioned in the transactions of Jan. 7, (b) the note mentioned in the transaction of Jan. 12, properly endorsed.

PHYSIOLOGY.

1. Name three classes of non-nitrogenous food substances. Name the organs of digestion and state what is the principal agent in the digestion of the fats and starches.
2. What are the effects of vigorous exercise taken immediately after eating? What do you understand by protoplasm, nucleus and centrosome? Describe a typical cell of the human body.
3. Name the organs or functions of the human body that are first and most seriously affected by the use of alcohol and narcotics. What are bacteria and how do they produce disease?
4. What is the importance of ventilation to the human body? State how the heat of the body is produced and regulated. Distinguish between common and special sensations. What is instinct?

5. Define diaphragm, œsophagus, diastole, pericardium and villi. Define astigmatism and cataract and state the causes and effects of each. Distinguish between a stimulant and a narcotic.

PHYSICS.

1. Define thermo-dynamics, latent, sensible and specific heat. Define energy, foot-pound, dyne, erg, and horse-power.
2. What is Mariotte's Law? What is Pascal's Law? What is Archimedes' principle? Deduce the formula for measuring kinetic energy when weight and velocity are given.
3. What determines the ratio between the power and the resistance overcome in the hydraulic press? What is the underlying principle of the dynamo? Name and define four units of electrical measurement.
4. State the laws of the pendulum. Find the length of a pendulum that will vibrate quarter-seconds. Distinguish between the essentials of the incandescent and the arc electric light.
5. Find the weight of the air in a room 30 feet long, 20 feet wide and ten feet high. A mass of iron weighing 10 kgm. (specific heat 0.112) falls through a height of 100 m. Find the heat generated when it strikes the ground.

SCIENCE OF EDUCATION.

1. Distinguish between social, moral, and religious culture.
2. Should the teacher ever merely entertain? When should he explain? Lecture? Distinguish between knowledge and education.
3. What can *you* do to bring the school and the home into closer life-relation? Why should they be in close relation? Have you read Pierre Loti's "Story of A Child"?
4. Name three qualifications for good reading. Discuss each one. "Good reading is an art." Explain this very fully.
5. Professor Laurie and Roger Ascham object to paraphrasing. Quintillian recommends it. What are the arguments on either side?
6. At what age should the study of history be begun? What is the Herbartian idea on this point? Give reasons. When should story-telling begin in the life of a child?
7. "Youth is a marvelous stage of development." Explain.
8. Name five processes of knowledge and define each.

TRIGONOMETRY.

1. Define the cosine, cotangent, and cosecant of an angle, and prove that these ratios remain unchanged so long as the angle is the same. Find the value of these three ratios for an angle of 45° .
2. Prove the formulas:

$$(1) \sin A = \sqrt{1 - \cos^2 A}$$

$$(2) \cos A = \frac{1}{\sqrt{1 + \tan^2 A}}$$

If $\sec A = \sqrt{2}$, find $\tan A$

3. Prove that $\sin(90^\circ + A) = \cos A$, and $\cos(90^\circ + A) = -\sin A$. Hence show that $\cos(180^\circ + A) = -\cos A$.
4. Show that $\cos^2 A \tan^2 A + \sin^2 A \cot^2 A = 1$.
5. Prove that $\cos(A+B) = \cos A \cos B - \sin A \sin B$. Hence show that:

$$\cos(A+B+C)$$

$$= \cot A \cot B \cot C - \cot A - \cot B - \cot C$$

$$\sin A \sin B \sin C$$

6. Given that $\sin \frac{1}{2}A = \frac{3}{5}$, find the value of $\tan A$.
7. Prove that the sides of any plane triangle are proportional to the sines of the angles opposite to these sides.
If $2s$ = the sum of the three sides (a, b, c) of a triangle, and if A be the angle opposite to the side a prove that

$$\sin A = \frac{2}{bc} - \sqrt{s(s-a)(s-b)(s-c)}.$$

8. Prove that in any plane triangle

$$\tan \frac{1}{2} (A-B) = \frac{a-b}{a+b} \cot \frac{1}{2} C.$$

LOGIC.

1. Define genus, species, differentia.
2. What is meant by the quantity and quality of a proposition? By generalization? By ambiguous middle?
3. Explain the relation of logic to psychology.
4. Make a comparison between inductive and deductive reasoning.
5. Give the rules for correct definition.
6. Define and illustrate the terms of disjunctive reasoning, concept and judgment.
7. Explain and illustrate hypothetical reasoning.
8. Show how the middle, major and minor terms are related.

POLITICAL ECONOMY.

1. State the difference between co-operative and profit-sharing industries.
2. Give all the functions of a bank. State the advantages and the dangers of bank money.
3. State the principles of Henry George; of Adam Smith.
4. Who was the first secretary of the U. S. treasury? How does he rank as a financier? What is a trust? Give examples.
5. What is the origin of gold and silver money? What are some of the objections to the use of these two metals as money? To the use of paper money?
6. State one cause of high wages in America. Do wages tend to fall to the limit of subsistence? Why?
7. State and fully illustrate three of the relative conditions of production.
8. What are the leading arguments of communism and of socialism? Show fallacies.

THEORY AND PRACTICE.

1. Define consciousness, memory, imagination, percept, concept, and sense-perception. What physical elements are involved in sense-perception?
2. What would be the condition of the man with only presentative and representative powers? Distinguish between corporal and psychical feelings and state what is included in each.
3. Define and distinguish between intellectual power and skill. Distinguish clearly between science and art in teaching. How do you comply with the law in reference to scientific temperance instruction?
4. What do you understand by the term "Common Sense Didactics?" Define good discipline and state some of the ways by which it may be secured. What is the relation between interest and attention?

5. State the most essential factors in the school and then the most essential elements within the factors stated. Define habits and state how they may be cultivated and controlled.

BOTANY.

1. Define spike, glaucous, convolute, adventitious, stomate, endogen, exotic.
2. Give common name, family name and species of two herbs and three trees.
3. How does a plant get each of its chemical elements? How is a fern fertilized?
4. Draw and name the kinds of indeterminate inflorescence. Distinguish ovule from ovary.
5. Describe the work of plants in making soil.
6. Draw and name the kinds of leaves.
7. Outline the kinds of fruits.
8. Is a sponge an animal or a plant? Give reason for answer.
9. Name a monocotyl, an exogen, a cryptogan, a biennial, a deciduous tree.

ZOOLOGY.

1. Define zoology. Distinguish between organic and inorganic substances. What are vertebrates? Invertebrates? Define infusoria and radiates. What are parasitic animals?
2. Define the batrachians. What is the chameleon? What are migratory birds? Name some of the birds that are without the power of flight. Are the following birds injurious or beneficial and in what ways: robins, finches, hawks and crows?
3. What are gavials, crocodiles, alligators? Describe the shark, catfish and gold fish. Describe the bumble bee and the hive bee. What are the two kinds of ostriches? Define dentition and write the dental formula.
4. What are the mammals? What are rodents? What is mimicry? Distinguish between the porcupine and the hedgehog. What are the ungulata? State something concerning each of the following: Ermine, tapir, llama, hyena, puma.
5. What is meant by quadrumana? Give some description of the aye-aye, marmoset, baboon, chimpanzee and gorilla. Define bimana. What are the characteristics that distinguish man from the quadrumana? Which of the latter most closely resemble man?

UNITED STATES HISTORY.

1. Name a good "Source Book" on United States history, or on some important phase of it. Why is such a work valuable?
2. Give an account of Thurlow Weed. Name the noted journalist who influenced American history. Name three great war correspondents.
3. Tell the story of Cæsar Rodney; of Andrew S. Rowan; of "Mad Anthony;" of Webster Davis; of "X. Y. Z." Papers; of Roger Brooke Taney.
4. What important part of America's history is represented in its early years by Gilbert Stuart, John Singleton Copley, and Benjamin West. Write a short sketch of each.
5. Name America's greatest historians (not more than 8 names). Greatest writers; greatest generals; greatest ambassadors and ministers.
6. What was the Dred Scott decision, and what its consequences?

7. Why are Russia and Japan at war? Be specific. What is *your* estimate of the value of current history?
8. How may a territory become a state? Discuss fully, giving examples, including your own state.
9. Who discovered the Philippines? When? Give their latitude and longitude. Name the chief farm products of the Philippines, and describe the one that is peculiar to these islands.
10. Name our great naval officers. Give some of the important events in the life of Major-General Merritt, U. S. A.

PSYCHOLOGY.

1. What is Psychology and what are the objects to be attained in its study? Illustrate the means to be employed in forming a logical concept. What are the classes into which we may divide the intuitions?
2. Name and define the three usual divisions of psychology. Outline the psychological epochs in education and cite the leading characteristics of each epoch.
3. Is conscience a faculty, and if so, to which of the other faculties is it most closely allied? Define imaginative activity and state the conditions upon which it depends.
4. What is judgment and what are its essential elements? Explain your understanding of categorical judgment. Upon what are many of the imperfections of memory based?
5. Distinguish between sense and acquired perceptions. What are some of the conditions that render mental labor pleasurable? What are some of the views regarding inherited intellect?

ARITHMETIC.

1. I have a garden $21\frac{1}{4}$ rods long and $10\frac{1}{2}$ rods wide; it is surrounded by a fence $7\frac{1}{8}$ feet high; a walk is laid out within the fence which is $7\frac{1}{4}$ feet wide at the sides of the garden and $6\frac{3}{4}$ feet wide at the ends; how much is left for cultivation?
2. How many cannon balls, 6 inches in diameter, are contained in a cubical vessel whose side measures 2 feet, and how many gallons of water will it hold after it is filled with the balls?
3. Mr. Johnson has a garden 160 feet long and 105 feet wide; he wishes to raise the surface 5 inches by using the earth taken from a ditch 3 feet wide dug around it within the fence, but finds that this earth loses 10% in bulk after being spread over the garden; what must be the depth of the ditch?
4. A steamer going from Philadelphia to Liverpool passes over $8\frac{1}{2}$ degrees of longitude on an average in a day; how long is it from noon one day to noon the next day, and how long will it be on the return voyage?
5. Two steamboats leave Philadelphia and Trenton at the beginning of ebb-tide, going towards each other, their rate of travel being 10 miles an hour, and the tide running $1\frac{1}{2}$ miles an hour; how far from Philadelphia will the boats meet, the distance being about 30 miles?
6. In turning a cart within a circle it was observed that the outer wheel made two turns while the inner made one; the wheels were each three feet high, and the axle-tree $4\frac{1}{2}$ feet long; what was the circumference of the track described by the outer wheel?
7. A field is square and contains twenty acres. How many rounds will a reaper (6 ft. swath) make in order to cut one-half the field?

8. The area of a rectangular field is 3150 square rods and the perimeter is 250 rods. Find the sides.

ALGEBRA.

1. Factor:

(a) $81b^4 - 16$

(b) $x^2 - 9y^2 + 6x + 9$

(c) $25b^4 - b^2c^2 \quad 64c^4$

2. Find the square root of

$$a^{2m} - 2a^m b^2 + b^4 + 2a^m c^{2n} - 2b^2 c^{2n} + c^{4n}$$

3. Simplify:

(a) $2\sqrt[3]{3x} + 5\sqrt[6]{9x^2} - \sqrt[9]{27x^3}$

(b) $3\sqrt{\frac{8a}{4b^2}} + 2\sqrt{\frac{a}{3b^2}} - \sqrt{\frac{a}{27b^2}}$

4. $\frac{a+x+\sqrt{2ax+x^2}}{a+x-\sqrt{2ax+x^2}} = b$, find x

5. $\frac{\sqrt{b}-\sqrt{b-\sqrt{b^2-bx}}}{\sqrt{b}+\sqrt{b-\sqrt{b^2-bx}}} = c$

6. $\left. \begin{array}{l} \frac{1}{x} + \frac{1}{y} = \frac{1}{2} \\ \frac{1}{xy} = \frac{1}{9} \end{array} \right\} \text{ find } x \text{ and } y.$

7. From two places, distant 720 miles, A and B set out to meet each other. A traveled 12 miles a day more than B, and the number of days before they met was equal to one-half the number of miles B went per day. How many miles did each travel per day?
8. A farmer has a field of 18 rods long and 12 rods wide, which he wishes to enlarge, so that it may contain twice its former area, by making a uniform addition on all sides. What will be the sides of the field when it is enlarged?

GENERAL HISTORY.

1. Give an account of Michael Severtus. Name the greatest of the Medici. Name the Popes of that time.
2. Brief sketch of Savonarola.
3. Brief account of the Thirty Years' War.
4. Name the Bourbon kings of France. Write a short sketch of the greatest of them.
5. Discuss the contest between Hildebrand and Henry IV.
6. Describe the Second Punic War.
7. Describe a Greek play. Write a short account of Phidias.
8. Name the Houses of England to the present time. Name, also, the greatest rulers of each House, or Dynasty. Give dates.
9. Why is 1619 A. D. important? 732 A. D.? 490 B. C.? 333 B. C.? 1066 A. D.? 1863, July 1-3?
10. What is the origin of the Russian people? Name, with dates, the great czars of Russia. Which is older, Japan or Russia? What form of government has each country?

HISTORY OF EDUCATION.

1. Give leading facts about Chinese Primary and Higher Education. Is education in China under control of the government? What are some of the strongest criticisms of the education given a Chinese student.
2. Compare—as educational factors—Confucius and Zoroaster.
3. "The world is saved by the breath of school children."—The Talmud.
Discuss this statement, and give an account of *The Talmud*, as an educational factor.
4. What are the great pedagogical principles found in the teaching of Christ?
5. Compare the schools of Athens and of Sparta, discussing the views of the greatest teachers of each city.
6. Give a full account of Abelard.
7. What is the so-called "Humanistic Movement"? Name its leaders in Italy and Germany.
8. How has Locke influenced education?
9. Give a clear account of the present school system of Germany.
10. The same of England. (Briefly.)
11. Name the greatest teachers produced by the monastic order of St. Benedict.
12. Classify the schools of the United States and name chief sources of support for the same.

ENGLISH LITERATURE.

1. Explain fully the so-called Romantic Movement in Literature, naming its great leaders.
2. Dean Swift—a short sketch—giving his place in literature and his best writings.
3. What was Jonathan Edwards' great work? Gibbon's? Macaulay's? Dickens'? Tennyson's?
4. Give an account of Ossian. Quote him. This writer was a favorite of what great military chieftain? Of what poet?
5. Why was "The Faerie Queen" so influential? Quote from it. Name its author.
6. Under what conditions or surroundings did Gibbon write his masterpiece? To what noted woman was he engaged to be married? Name the most famous chapter of his masterpiece.
7. Name America's most noted poet of nature. England's. Quote each one.
8. Describe the personal appearance of Ruskin. Name your favorite work of Ruskin. When and where did he live? Name his great work on art. Name a great Russian writer on art.
9. Name five leading present-day writers, and at least one work of each.
10. Name the great war correspondents. Give the author of "Ninety-Three," "The Light That Failed," "Romola," "The Choir Invisible," "A Woman's Reason," "The Crisis," "The Conqueror." Who founded "The Tattler," "The New York Tribune," "Poor Richard's Almanac," "The Saturday Evening Post"?
11. Give a short but concise history of the novel.
12. Define metre, and name kinds of feet. What is the heroic measure? Scan the following:

And what is so rare as a day in June?
 Then, if ever, come perfect days;
 Then Heaven tries earth if it be in tune,
 And over it softly her warm ear lays.
 Whether we look, or whether we listen,
 We hear life murmur, or see it glisten.

READING.

1. What attention to punctuation should be given in teaching reading?
2. State the advantages resulting from the use of supplementary reading.
3. Make a list of ten books suitable for supplementary reading, and name grade or school year for which each book is adapted.
4. What special difficulties have you met in teaching reading? How have you overcome them?
5. To what extent should definition and spelling receive attention in a reading lesson? Why?
6. How may the school library be utilized as a help in teaching reading?
7. Indicate the correct pronunciation of the following words: debonair, diaphanous, prescience, docile, epaulet, sinecure, detonate, medicinal, refutable, aerated.

GEOGRAPHY.

1. Write upon the following topic: Extent and character of the work to be covered preliminary to the use of a text-book.
2. Make a list of reference material that can be readily secured in teaching geography.
3. "The commercial and political importance of a given territory is sometimes more largely determined by the character of the people than by the geographical conditions." Show the truth of this statement and cite typical illustrations.
4. Contrast Holland and Switzerland, showing how physical conditions have determined industries and characteristics of the people of these countries.
5. Mention three events of current interest during the past year that should be considered in connection with geography, and show what application should be made of each.
6. In what respects does the climate of European Russia strongly resemble that of the Mississippi Valley? Why?
7. Name the two largest islands of the Philippines. What are the advantages to the United States of its control of the Philippines? The disadvantages?
8. Describe the present form of government of Japan. State facts indicative of the advancement which the Japanese have made during the past fifty years.

CIVIL GOVERNMENT.

1. Must a representative be a resident of the district in which he is chosen? Must he be a voter? Answer for the U. S. and Ohio.
2. Name President Roosevelt's Cabinet. Members of the Supreme Court. Speaker of the House. President of the Senate.
3. Name ten general powers of Congress.
4. How are organized territories governed?
What unorganized territory has the U. S.?
5. Where does the government get its power?
What is the object of government?
6. Give an outline of the system of the U. S. courts.
7. What two amendments to the state constitution are to be voted on next November?
How amend the state constitution?
How amend the federal constitution?

ORTHOGRAPHY.

1. Define elementary sound, trigraph, antonym, phonogram, homophone.
2. State the rules of spelling applying to final *e*; monosyllables ending in a consonant; suffix to words ending in *y*; plurals of nouns ending in *o*.
3. Account for the presence of so many silent letters in English words. Give two rules of spelling applying to silent letters.
4. State the rule of pronunciation applying to the sounds of *c*. Mention two exceptions.
5. What use may be made of the method known as *visualization* in teaching spelling?
6. Spell twenty-five words from dictation.

RHETORIC.

1. Define sublimity and give some of the qualities that may produce it
2. Define style. Name its essential properties.
3. What is meant by unity of time, place and action in dramatic composition? Which is the most important? Apply your answer, also, to a Greek play.
4. What is meant by the unity of a sentence?
5. Classify the various forms of poetry and state their distinguishing characteristics.
6. What are the objects of the study of Rhetoric?
7. Distinguish between wit and humor—giving noted examples of each.
8. Words should have what characteristics to be of good use? Examples.
9. What relation exists between Rhetoric and Grammar? Rhetoric and English Literature? Quote from *Thanatopsis* and point out the rhetorical beauty of the part quoted.
10. Write a short account of some accident which enlists human sympathy to a high degree.

SCIENTIFIC TEMPERANCE.

1. What is the chemical composition of alcohol? Name five alcoholic drinks and give the per cent. of alcohol in each.
2. Why does the habitual use of tobacco (a) weaken the voice, (b) affect the action of the pulse?
3. Mention some of the hereditary effects of excessive indulgence in stimulants and narcotics.
4. State the effect on the kidneys of the habitual use of alcoholic drinks. Why does this effect on the kidneys disturb the health of the whole system?
5. What recent legislation has been enacted in one of our neighboring states relative to the sale and use of cigarettes?

GEOMETRY.

1. The radius of a circle is six inches. Through a point of 10 inches from the center tangents are drawn. Find the lengths of the tangents, and also of the chord joining the points of contact.
2. Inscribe a square in a semi-circle.
3. What part of a parallelogram is the triangle cut off by a line drawn from one vertex to the middle point of one of the opposite sides?

4. Demonstrate: The area of a circular ring is equal to that of a circle whose diameter is a chord of the outer circle and a tangent to the inner circle.
5. The perpendicular from any point of a circumference upon a chord is a mean proportional between the perpendiculars from the same point upon the tangent drawn at the extremities of the chord.
6. Demonstrate: The area of a triangle is equal to half the product of its perimeter by the radius of the inscribed circle.
7. Draw a straight line equidistant from three given points.
8. The frustum of a right circular cone is 14 feet high, and has a volume of 924 cubic feet. Find the radii of its bases if their sum is 9 feet.

MAY, 1905.

Uniform examination questions for county teachers' examination for Teacher's High School Certificate, prepared under the direction of the state school commissioner, and sent out from his office in accordance with section 4071a of the new school code.

GEOMETRY.

1. What is a postulate?
Mention two postulates that may be made with regard to straight lines.
2. Define (a) rhombus; (b) lune; (c) trapezium; (d) rhomboid.
3. State and prove the converse of the proposition given below—
"A straight line parallel to one side of a triangle divides the other two sides proportionally."
4. What is a corollary?
Give four corollaries to the proposition—
"The sum of three angles of a triangle is equal to two right angles."
5. Prove—"Through three given points not in the same straight line one circumference and only one can be drawn."
6. Construct a mean proportional between two given straight lines. When is a straight line said to be divided into extreme and mean ratio?
7. Venice is due south of Leipsic $5^{\circ} 55''$; how many miles apart are they, the radius of the earth being 4000 miles?
8. Find the volume of a frustum of a cone revolution the radii of whose bases are 21 in. and 6 in., and whose altitude is 36 in.

GENERAL HISTORY.

1. Name the most striking geographical features of Greece, and state how Greek history was influenced by the geography of Greece.
2. At what periods in the world's history were the following countries in the height of their power—Austria, Egypt, Persia, Rome, and Spain?
3. What is meant by the Hegira? The Koran? Islam?
4. When and how was the Magna Charta obtained?
5. Discuss the Holy Alliance as to—(a) the sovereigns that entered into it; (b) its purpose; (c) its results.

6. What battle made Napoleon master of Europe?
Give a brief account of his Egyptian campaign.
7. What was the Nullification Act of South Carolina?
How did the U. S. government treat it?
8. What made Garibaldi famous?
9. Trace the rise of the English House of Commons from its origin to predominance of power.
10. Analyze Russia's attitude toward the "Eastern question."

ALGEBRA.

1. Define Algebra. Explain as you would to a class the meaning of signs.
2. Explain the rules for signs in subtraction and multiplication.
3. What are similar quantities? Illustrate. What are dissimilar terms? Illustrate. What is an equation? Write one.
4. Define axiom, theorem, and problem. Write five theorems, and illustrate each.
5. Simplify:

$$\frac{x}{1} + 1 - \frac{1}{x+1}$$

$$1 + \frac{\quad}{x}$$
6. If 9 be added to a number consisting of two digits, the two digits will change places, and the sum of the two numbers will be 33; what is the number?
7. A and B laid a wager of \$20: If A loses, he will have as much as B will then have; if B loses he will have half as much as A will then have; find the amount each has.
8. Three-fourths of the square of twice a number is equal to five-fourths of the square of four-thirds of the number, increased by 28; find the number.
9. Solve:

$$x^2 + xy = 10$$

$$x^2 + y^2 = 13$$
10. Required the last term of a series whose first term is a , number of terms n , and the sum of the terms an^2 .

RHETORIC.

1. Define Rhetoric. Make a clear distinction between Rhetoric and Grammar.
2. Define and state the most probable origin of language.
3. Define simile, metaphor, and allegory, and quote an example of the simile and the metaphor.
4. Define style, and state the difference between a simple and a labored style.
5. What is meant by purity of diction? What is a literary masterpiece? Name five good examples of the latter.
6. State the difference between wit and humor. Give an example of each to illustrate the distinction.
7. What is sublimity? What are the principal points necessary to sublimity in writing?
8. Write examples of antithesis, epigram, metonymy, hyperbole, and irony, and explain the figure in each.
9. Write four quotations in verse, each illustrating different feet, and scan each and name the measure used in each.

THEORY AND PRACTICE.

1. What special preparation have you made for the work of teaching?
2. Name five elements of governing power in a teacher.
3. State the underlying principles that should govern the administration of punishment.
4. What change has been made by the new code in reference to township boards of education?
5. What is meant by correlation of studies? Illustrate.

COMMON SENSE DIDACTICS.

1. What is said of the influence of example in the formation of habits?
2. Name some of the objects of school government.
3. What ends are to be kept in mind in temperance instruction?
4. How is patriotism best taught?
5. Name three factors in the recitation.
What is the object of the recitation?

MENTAL GROWTH AND CONTROL.

1. What is the most valuable lesson derived from the chapter on attention?
2. State the distinction between association and habit.
3. Discuss the comparative influence of heredity and environment.
4. What are instincts?
Name some of the useful ones.
5. How does association assist memory? Attention?
NOTE.—Take the first group of five and either the second or third group of five.

LATIN.

1. Give the case endings for all the cases in all the declensions in Latin.
 2. Give the principal parts of one verb of each of the regular conjugations in Latin.
 3. Write briefly of the periphrastic conjugation of verbs. Illustrate your statements.
 4. Write in Latin: "Cicero would have ordered Catiline to leave the city, had he not known that many Roman citizens entertained the same sentiments as Catiline."
 5. Write in Latin: "We will send ahead the bravest soldiers to see in what direction the Rhemi have marched."
- 5-10 inclusive.

Translate and give the construction of the words in italics:

"Causa quae sit, videtis; nunc, quid agendum sit, considerate.

Primum mihi videtur de genere belli, deinde de magnitudine,

tum de imperatore deligendo *esse dicendum*. Genus est enim belli ejus modi, quod maxime *vestros* animos excitare atque *inflammare*

ad *persequendi* studium *debeat*; in quo agitur populi Romani gloria, quae vobis a majoribus, cum magna in omnibus rebus, tum summa in re *militari* tradita est; agitur *salus* sociorum atque amicorum, pro qua multa majores vestri magna et gravia bella gesserunt; *aguntur* certissima populi Romani vectigalia et maxima, quibus *amissis* et pacis ornamenta et subsidia belli requiretis; aguntur bona multorum civium, quibus est a vobis et ipsorum et rei publicae causa consulendum."

CHEMISTRY.

1. (a) What is an element?
(b) About how many known elements are there?
(c) Name two that have been recently discovered.
2. (a) Of what is air composed?
(b) Is air a mixture or a compound? Explain.
3. Explain the action of yeast in breadmaking and the formation of "mother" in vinegar.
4. Distinguish between an acid and an alkali.
5. State what is meant by the vapor density of a gas; find the molecular weight of a gas whose vapor density is 44.
6. Write the symbols of the following elements: Copper, iron, sodium, gold, silver, sulphur, lead, magnesium, manganese, mercury.
7. What gases unite to produce the heat in the calcium light?
What causes the intense light?
8. What is dynamite?
What is one essential element in most explosives?
9. Give the common names of H_2O , HNO_3 , H_2CO_3 , $NaCl$, N_2O .
Give the chemical names of iron pyrites, galena, cinnabar, gypsum, marble.
10. What do you understand by a chemical reaction? Answer by illustration.

PHYSICS.

1. Define the universal properties of matter.
2. Distinguish between an atom and a molecule.
3. Explain why liquids are not as good conductors of heat as solids.
4. What is the "critical angle"—as of glass?
5. A bullet is shot upward with a velocity of 300m. per second; how far will it rise in the first second? How far from the starting point will it be after 40 seconds?
6. Define (a) dew point; (b) penumbra; (c) calorie.
7. What are overtones? Harmonics?
8. Give the law by which the operation of the wedge is controlled.
How is the law modified in the case of the inclined plane?
9. A luminous point is three inches from a convex lens having a focal length of five inches. Find the position of the image.
10. Define resultant of forces and illustrate by diagram.

CIVIL GOVERNMENT.

1. Describe briefly three classes of colonial government.
Give an example of each.
2. Discuss briefly the origin of political parties.
3. How are territories represented in Congress?
What are Congressmen-at-large?
4. Enumerate the powers of the President.
5. How is the District of Columbia governed?
6. Explain what is meant by each of the following—letters of marque and reprisal; referendum; internal revenue; nullification; bill of rights.
7. How are treaties made by our government?
8. How many offices are there in the President's cabinet?
What is the latest department created?
Who was its first incumbent?
9. Name three different kinds of courts in Ohio.
Name the county officers in Ohio elected by the people.
10. Discuss briefly the Constitution as to its origin and time of adoption.
How may it be amended?

PHYSICAL GEOGRAPHY.

1. Explain how rain is produced.
How do you account for deserts?
2. Explain the cause of land and sea breezes.
3. Name five books of interest in connection with this subject.
4. Define dew-point, glacier, tundras, drift and buttes.
5. Locate the great iron, gold, coal, lead, and diamond regions of the world.
6. Account for the formation of the Gulf Stream.
Describe its course, and name the countries affected by its influence.
7. How is the admosphere heated?
Why is there less danger of frost on a cloudy night?
8. From what countries do you get quinine, india rubber, tea, opium, cloves and pepper?
9. Describe the trade winds as to their (a) origin; (b) direction; (c) advantages.
10. Explain how the inclination of the earth's axis affects the climate.

PHYSIOLOGY.

1. Use either the foot or the arm to illustrate three kinds of levers found in the human body.
2. Why does the face usually become flushed when alcohol is taken into the stomach?
3. What are the bronchial tubes? The villi?
4. Why should a person abstain from the free use of ice water at meals?
5. Locate and describe the cornea. What is the function of the iris?
6. Name three classes of food substances from which lime is derived for the formation of bone.
7. What physiological peculiarity is referred to when it is said that a person has "a lymphatic temperament"?
8. What are the functions of the cerebrum?
From what part of the brain do sensations emanate?
9. What is the function of the (1) chyle? (2) gastric juice? (3) lymph?
10. What are the organs of respiration?
How does the diaphragm aid in respiration?

LITERATURE.

1. Define literature. What was Lord Bacon's definition of literature?
2. Write briefly of the writings of the early American colonists.
3. What is said of the writings of Cotton Mather and Jonathan Edwards? In what respect were these writers alike? The general criticism now made concerning the writings of both?
4. Give a brief account of the literary work of Benjamin Franklin.
Which two of his works are now recognized as classic? Quote some of the familiar sayings of Benjamin Franklin.
5. Who was the first American novelist? Name some of his novels, and comment on their merit.
6. Make a list of Irving's best writings. What is meant by the "Knickerbocker School" of which he has been styled the father?
7. What is said of Irving's literary style; his wit, his originality?
8. What are the chief characteristics of Anglo-Saxon poetry? Who are the principal writers of the Anglo-Saxon period?
9. Compare the literature of the Elizabethan period with that of the Commonwealth and Restoration as to character, style and literary merit.

10. Name the author of each, and describe any one of the following: Tales of a Traveler, Evangeline, Cotter's Saturday Night, Leather-Stocking Tales, Little Women, Snow Bound, Ben Hur, Fable for Critics, The Scarlet Letter, Huckleberry Finn.

BOTANY.

1. What is the principal office of roots?
Explain the advantage of rotation of crops in agriculture.
2. Designate the periods of life as annual, biennial or perennial, of the following plants: hop, bean, corn, beet, potato.
3. Name three characteristics of the endogens that distinguish them from exygens.
4. Explain these terms: a monoecious plant; a staminate flower; a sterile flower.
5. Name all the parts of a flower.
6. Give the common names and qualities of three of our most important grasses.
7. What is fertilization?
What service do insects render in the fertilization of flowers?
8. What is meant by the term "Alternation of Generations?"
Give the different phases in the case of ferns.
9. What is parasite?
What is a saprophyte?
Give examples of both.
10. What are the principal plant foods?
From what sources are they derived?

MAY, 1905.

Uniform examination questions for county teachers' examination for Teacher's Special Certificate, prepared under the direction of the state school commissioner and sent out from his office in accordance with section 4071a of the new school code.

FORENOON—MUSIC.

1. What is a sound, a tone, a key, the tonic or key-note?
2. What is a staff? What a clef? Upon what line is the treble clef placed?
3. What is the difference between a chromatic and a diatonic semitone?
4. What is a perfect fifth? Name or write fifths to all the notes, beginning with F and proceeding always a fifth higher.
5. Define legato, staccato, da capo, piano, and forte.
6. Write the notes which represent the different lengths of tone.
Write the various rests used in music.
7. What is modulation? What is syncopation?
8. Write the major triads found in the scale of C. Write the minor triads found in the scale of C.
9. How does the major triad differ from the minor? What is the diminished triad?
10. When is a chord said to be inverted? Write the inversions of the chord of the dominant seventh.

MAY, 1905.

GERMAN.

1. Wie viele Artikel gibt es? Decliniren Sie den bestimmten und den unbestimmten Artikel.
2. Translate Mit Goethe starb der größte Dyrker, vielleicht der größte aller Zeiten und aller Völker, und wie einer unserer eigenen Dichter, Bayard Taylor sagt, einer der vollkommensten und uniberfelliſten Menſchen aller Zeiten.
3. Decliniren Sie: „Der Kamerad“, „das Herz“ in der Ein- und Mehrzahl.
4. Verſetzen Sie folgende Sätze: Er war noch ein Knabe, als ich ihn kannte. Sie machten uns den Vorſchlag, umzukehren, als wir ſchon nahe bei der Stadt waren. Ich befinde mich wohl, ſeitdem ich auf das Land gekommen bin.
5. Wann wird das Eigenschaftswort nicht declinirt? Wann kann es declinirt werden? Geben Sie Beiſpiele. Wie kann es declinirt werden? Geben Sie Beiſpiele.
7. Schreiben Sie die Hilfszeitwörter der Zeit. Geben Sie die Hauptformen von „ſein“ und „werden“. Conjugiren Sie „ſein“ in der Gegenwart, Indicativ und Subjunctiv.
8. Decliniren Sie: „Schwarzes Tuch“ in der Ein- und Mehrzahl.
9. Setzen Sie das paſſende perſönliche Fürwort an die Stelle des Striches. _____ gehen in den Garten, wollen _____ nicht begleiten? Es thut _____ leid, daß _____ nicht begleiten kann, _____ muß auf das Land fahren. Geſtern fuhren _____ mit meinem Onkel nach Berlin.
10. Translate Das Leben gleicht einem Buche; Loren durchblättern es flüchtig; der Weiſe liest es mit Bedacht, denn er weiß, daß er es nur einmal leſen kann. Er ſchläft den letzten Schlaf. Er war der Hülfe bedürftig.

Uniform examination questions for county teachers' examination for Teacher's Elementary School Certificate, prepared under the direction of the state school commissioner, and sent out from his office in accordance with section 4071a of the new school code.

WRITING.

Add a quotation of one stanza of poetry to the manuscript on orthography. Examiners will grade writing of the manuscript in orthography.

NOTICE TO EXAMINERS:—The order of submitting lists to applicants must be strictly followed. Lists to be taken in the forenoon must not be given to applicants in the afternoon.

So many calls for the required high school branches have been received that it has been found necessary to send out the entire list this month.

E. A. JONES, *Commissioner*.

ORTHOGRAPHY.

50 credits.

1. What is orthography?
2. What is a primitive word?
3. What is a syllable?
4. What is meant by a penult or penultimate?
5. Mark the first vowel in the following: Ale, arm, all, end, ice, use, old, eve, what.

25 words (2 credits each.)

1 privilege	10 museum	18 beguile
2 opulent	11 homicide	19 cylinder
3 almanac	12 apparatus	20 tenement
4 pursue	13 heinous	21 cinder
5 apparent	14 rendezvous	22 genealogy
6 imperative	15 surety	23 mucilage
7 illegible	16 decipher	24 unparalleled
8 occurrence	17 Fahrenheit	25 hymeneal
9 sure		

ARITHMETIC.

1. When it is 10:45 p. m. at Portland Me., 70° 15' west longitude, what is the time at Rome, 12° 27' east longitude?
2. At \$12 per M what will be the cost of 2 in. plank for a 3 ft. 6 in. sidewalk on the street side of a rectangular corner lot 56 ft. by 106 ft. 6 in.?
3. Find the cost of a carpet $\frac{3}{4}$ yd. wide, at \$1.50 per yd., for a room 20 ft. long and 18 ft. wide, strips running crosswise, allowing a waste of 1-5 yd. on each strip for the matching?
4. Find the sum of 5-6 mi., 2-3 fur., $\frac{1}{2}$ rd., and 2-3 ft.
5. A and B being 150 miles apart travel toward each other. They start at the same time and meet at the end of 8 hours, when they discover that A has traveled $1\frac{1}{3}$ miles per hour more than B. How many miles has each traveled?
6. Give the principle upon which the reduction of fractions is based. Illustrate.
7. Which is the more profitable, to buy goods worth \$500 at 90 days, 3% off for cash, or put the amount at interest at 7%, and let the bill run to maturity?
8. The wheels of a sulky are $4\frac{1}{2}$ feet apart. In driving around a circular track the inner wheel traverses 1 mile. How far does the outer wheel go?

GRAMMAR.

1. Write (a) an exclamatory sentence containing an infinitive phrase, (b) a declarative sentence containing a noun clause, (c) an interrogative sentence containing an adverbial clause.
2. Define modifier, phrase, clause.
3. Write sentences illustrating the following use of the infinitive phrase:
 - (a) as subject.
 - (b) as attributive complement.
 - (c) as object.
 - (d) as independent element.
4. Distinguish between analysis and synthesis.
5. Write sentences illustrating a clause used (a) subject of a finite verb, (b) object of a transitive verb, (c) object of a preposition.
6. Give an example in a sentence of "what" used as (a) a relative pronoun, (b) an interrogative pronoun, (c) an adjective, (d) an interjection.
7. Define Conjugation. Define Declension. Decline *them*. Define Comparison. Compare *good-natured*.

8. Write the plural of the following: Ottoman, alderman, court-martial, mouthful, nebula, focus, hypothesis, trout, elf, aid-de-camp.
9. Analyze:
 May God forgive the child of dust
 Who seeks to know where Faith should trust.—Whittier.
10. "This castle hath a pleasant seat; the air nimbly and sweetly recommends itself unto our gentle senses."
 Classify each word in the above sentence and give reason.

THEORY AND PRACTICE.

1. What special preparation have you made for the work of teaching?
2. Name five elements of governing power in a teacher.
3. State the underlying principles that should govern the administration of punishment.
4. What change has been made by the new code in reference to township boards of education?
5. What is meant by correlation of studies? Illustrate.

COMMON SENSE DIDACTICS.

1. What is said of the influence of example in the formation of habits?
2. Name some of the objects of school government.
3. What ends are to be kept in mind in temperance instruction?
4. How is patriotism best taught?
5. Name three factors in the recitation.
 What is the object of the recitation?

MENTAL GROWTH AND CONTROL.

1. What is the most valuable lesson derived from the chapter on attention?
2. State the distinction between association and habit.
3. Discuss the comparative influence of heredity and environment.
4. What are instincts?
 Name some of the useful ones.
5. How does the association assist memory? Attention?
 NOTE.—Take the first group of five and either the second or third group of five.

PHYSIOLOGY.

1. Use either the foot or the arm to illustrate three kinds of levers found in the human body.
2. Why does the face usually become flushed when alcohol is 'taken into the stomach'?
3. What are the bronchial tubes? The villi?
4. Why should a person abstain from the free use of ice water at meals?
5. Locate and describe the cornea. What is the function of the iris?
6. Name three classes of food substances from which lime is derived for the formation of bone.
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8. What are the functions of the cerebrum?
 From what part of the brain do sensations emanate?
9. What is the function of the (1) chyle? (2) gastric juice. (3) lymph?
10. What are the organs of respiration?
 How does the diaphragm aid in respiration?

HISTORY AND CIVIL GOVERNMENT.

1. What connection had the following persons with American history; De Soto, Leonard Calvert, Roger Williams, Cartier, Henry Hudson?
2. What application had the terms "Whigs and Tories"?
3. Name five eminent European officers who served with distinction in the continental armies.
4. Define the terms citizenship, tonnage, letters of marque and reprisal, unconstitutional and treason.
5. Enumerate the principal duties of the secretary of state, an American ambassador, and American consul.
6. Mention three financial measures advocated by Hamilton for raising a revenue and strengthening the credit of the nation.
7. What addition was made to the territory of the U. S. in 1803? In 1867? In 1898?
8. Give a brief account of any two of the following: The Barbary war; the invention of the cotton gin and its results; the Alien and Sedition laws.
9. What service was rendered the American Revolution by (a) Benjamin Franklin, (b) Robert Morris.
10. Give the principal facts relating to the Louisiana Purchase, stating (a) time of purchase, (b) why its acquisition was desired, (c) from whom purchased, (d) the sum paid.

LITERATURE.

1. Define literature. What was Lord Bacon's definition of literature?
2. Write briefly of the writings of the early American colonists.
3. What is said of the writings of Cotton Mather and Jonathan Edwards? In what respect were these writers alike? The general criticism now made concerning the writings of both?
4. Give a brief account of the literary work of Benjamin Franklin. Which two of his works are now recognized as classic? Quote some of the familiar sayings of Benjamin Franklin.
5. Who was the first American novelist? Name some of his novels, and comment on their merit.
6. Make a list of Irving's best writings. What is meant by the "Knickerbocker School" of which he has been styled the father?
7. What is said of Irving's literary style; his wit; his originality?
8. In what does each of the following characters appear: Iago, Ichabod, Crane, Rowena, Giant Despair, Hester Prynne, Scrooge? Describe any two of the characters mentioned.
9. Classify the following and name the author of each: The Rape of the Lock, Kenilworth, In Memoriam, The Seasons, The Faerie Queene.
10. Define the following literary forms and name an example of each: sonnet, epic, tragedy, satire, lyric.

GEOGRAPHY.

1. Give the latitude of (a) the Tropic of Cancer; (b) the Arctic Circle, (c) the northern boundary of Ohio.
2. To what part of the world would you go for coffee? Diamonds? Tea? Sponges? Silk?
3. Name the countries of Europe that border on the North Sea with their capitals.
What countries of Africa border on the Mediterranean Sea?
4. Locate the five largest cities of Ohio by counties.
5. Name three large rivers draining (a) the northern slope of Asia; (b) the eastern slope; (c) the southern slope.

6. What and where are the following: Volga, Guam, Crimea, Tuskegee, Formosa?
7. Name the natural causes that have contributed to the growth of Cleveland, Minneapolis and San Francisco.
8. In what country and on what water is each of the following cities: Vera Cruz, Vienna, Genoa, Montreal, Duluth?
9. Describe the shortest all-water route from New York to Calcutta.
10. Give approximately the area and population of Ohio.
What states outrank it in population?

READING.

Examiners will conduct oral examinations in reading.

PUPIL'S EXAMINATION.

April 15, 1905.

(Under the Act of March 28, 1902.)

UNITED STATES HISTORY AND CIVIL GOVERNMENT.

1. Relate two events in the life of Columbus that show his perseverance.
2. Where and for what purpose did Lord Baltimore found a colony in America?
3. What battle do you consider marked the turning point of the Revolution? Give reasons.
4. What were the important events of the Hayes Administration?
5. Name six prominent generals of the Civil War, and tell on which side each fought.
6. What presidents has Ohio furnished? What battlefields?
7. Name five important events connected with the history of slavery in the United States.
8. Name three classes of persons who have no legal right to vote.
9. State three purposes, given in the preamble, for which the Constitution of the United States was framed.
10. What is the name of the highest court of the United States? How are its judges chosen?

ORTHOGRAPHY.

1. Distinguish between orthography and prosody.
2. Define the term liquid as applied in orthography. Mention all the letters in this class.
3. Write three suffixes that denote negation. Give the meaning of the prefixes pre, trans, and ex.
4. Mark correctly the pronunciation of the following words: (1) illustrate; (2) sacrifice; (3) Arkansas; (4) finance; (5) sacrilege.
5. Spell the following words to be pronounced by the examiner: (1) culinary (2) secede; (3) sensible; (4) achieve; (5) catarrh; (6) deplore; (7) assignee; (8) dropsy; (9) Milwaukee; (10) depths; (11) rogue; (12) pigeon; (13) ballad; (14) promissory; (15) gauge; (16) larynx; (17) Chesapeake; (18) reverse; (19) Appalachian; (20) cargoes.

WRITING.

NOTE.—Applicant will copy the following in his best handwriting, giving care to punctuation and capitals.

If I could put my words in song,
And tell what's there enjoyed,
All men would to my garden throng,
And leave the cities void.
In my plot no tulips blow—
Snow-loving pines and oaks instead;

And rank the savage maples grow
 From spring's faint flush to autumn's red.
 My garden is a forest ledge,
 Which elder forests bound;
 The banks slope down to the blue lake edge,
 Then plunge to depths profound.—*Emerson.*

PHYSIOLOGY.

1. Distinguish between physiology and anatomy.
2. Name the bones of the arm and hand.
3. Give the composition of the blood.
4. Describe the pulmonary circulation.
5. For what purpose is lime required in the body? Fat?
6. What are the organs of respiration? How does the diaphragm aid in respiration?
7. Name the digestive fluids.
8. Of what is the saliva composed, and what office does it perform?
9. Classify the teeth. Upon what class devolves the chief duty of masticating the food?
10. Why are stimulants dangerous? Illustrate by alcohol.

READING.

(Examiners will conduct an oral examination in reading.)

ARITHMETIC.

1. From one hundred subtract the sum of .371 and sixty-five ten thousandths, multiply the remainder by three-tenths, and divide the product by 5 millionths.
2. Explain the relation between longitude and time. Distinguish between standard and local time. What is the difference in time between eastern standard time and Pacific standard time.
3. The proceeds of a ninety day note discounted at a bank at 6% 17 days after date, are \$274.17; find the face of the note.
4. Define a composite number, power, reciprocal, meter, ratio.
5. A man bought goods at discounts of 20 and 30 from the list price, and sold at discounts of 10 and 4 from the list price. Find his per cent. of gain.
6. A square field contains twenty acres. Find the number of rods of fence required to enclose it.
7. What is the cost of flooring a room 18 ft. 6 in. long, and 12 ft. 3 in. wide, at \$8.25 per 100 sq. ft.?
8. Find the value of $8 \times 4 - 9 \times 2 + 43$, using the signs according to their true mathematical signification.
9. $\sqrt{.000961} = ?$
10. What is the common denomination to which dry measure and liquid measure can be reduced? A cask that will contain ten bushels of wheat will contain how many gallons of water?

GRAMMAR.

1. Name the two offices of a noun that a clause may perform.
2. Give the syntax of the italicized infinitives in the following:
 (1) The paper, *to be sure*, was rather frayed at the edges; (2) I shall endeavor *to render* it in modern parlance; (3) Shall I be left *to die alone*? (4) Books were written *to give pleasure and to be enjoyed*.
3. Define case, and state how the case of a substantive is determined.
4. Write two sentences, one containing a clause in apposition with a noun, and one containing a noun in apposition with a clause.

5. State three different ways of comparing adverbs and illustrate each.
6. Analyze the following selection:
The *Niobe* of Nations! there she stands,
Childless and crownless in her voiceless woe,
An empty *urn* in her withered hands,
Whose holy dust was scattered long ago.
7. Name and classify the modifiers of *Niobe*.
8. Name the principal and subordinate clauses in the selection and state the grammatical construction of each.
9. Parse the italicized words.
10. Classify pronouns and use and example of each in sentences.

GEOGRAPHY.

1. What river is on the boundary between (a) Pennsylvania and New Jersey; (b) Vermont and New Hampshire; (c) Europe and Asia; (d) United States and Mexico; (e) Paraguay and Argentine Republic?
2. What effect is a great extent of seacoast likely to have upon the climate of a country? What effect upon the occupation of the people?
3. Mention two states in the United States that lead in the mining of coal; two in the mining of copper; one in the mining of salt.
4. Name the five states that bound Ohio.
5. Locate two important commercial centers upon the Gulf of Mexico; two upon the Ohio river; one upon Lake Superior.
6. Define (a) oasis; (b) fjord; (c) delta.
7. What physical conditions have contributed to the growth of Buffalo as a commercial center?
8. Under the protection of what world power is each of the following cities: (a) Gibraltar; (b) Manila; (c) Sitka; (d) Algiers; (e) Cayenne?
9. Describe the government of Canada.
10. What articles would you expect a ship loading at Cape Town to take in cargo?

UNITED STATES STATISTICS.

TABLE I.

The total population, the school population and the adult male population.

State or Territory	Estimated Total Popula- tion in 1908	The School Population			Percentage of Boys	Estimated Number of Male Persons 21 years and over in 1908
		Estimated number of children 5 to 18 years in 1908				
		Boys	Girls	Total		
United States.....	79,900,389	11,415,307	11,239,694	22,655,001	50.38	22,234,431
North Atlantic Div.	22,140,788	2,704,598	2,702,704	5,407,302	50.02	6,587,707
South Atlantic Div.	10,931,970	1,748,893	1,726,755	3,475,648	50.32	2,613,720
South Central Div.	14,941,636	2,485,137	2,422,136	4,907,273	50.62	3,590,093
North Central Div.	27,490,996	3,919,243	3,843,810	7,763,053	50.46	7,886,839
Western Division...	4,394,999	557,436	544,289	1,101,725	50.59	1,556,072
North Atlantic Div.:						
Maine.....	702,875	82,430	80,637	163,067	50.55	220,630
New Hampshire...	422,109	45,488	45,088	91,176	49.89	134,485
Vermont.....	347,007	41,331	39,869	81,200	50.90	109,539
Massachusetts...	2,974,021	328,466	331,707	660,233	49.75	893,955
Rhode Island...	454,629	53,237	53,601	106,838	49.83	134,936
Connecticut.....	956,789	109,465	109,640	219,105	49.91	294,915
New York.....	7,659,814	911,870	918,826	1,830,696	49.81	2,301,185
New Jersey.....	2,016,797	250,789	253,410	504,199	49.74	594,955
Pennsylvania...	6,606,747	881,522	869,266	1,750,788	50.35	1,903,107
South Atlantic Div.:						
Delaware.....	189,878	25,557	24,761	50,318	50.79	55,501
Maryland.....	1,231,739	171,965	171,690	343,655	50.04	333,345
Dist. of Columbia	293,217	30,637	32,991	63,628	48.15	88,061
Virginia.....	1,919,103	305,159	301,278	606,437	50.32	463,318
West Virginia...	1,021,106	160,396	154,105	314,501	51.00	263,866
North Carolina...	1,976,571	332,785	325,413	658,198	50.56	436,385
South Carolina...	1,397,067	243,336	240,049	483,385	50.34	295,348
Georgia.....	2,336,404	391,191	389,165	780,359	50.13	528,303
Florida.....	566,885	87,864	87,303	175,167	50.16	149,593
South Central Div.:						
Kentucky.....	2,230,619	350,172	341,320	691,492	50.64	565,640
Tennessee.....	2,095,223	341,069	329,402	670,471	50.87	505,535
Alabama.....	1,923,284	325,428	316,949	642,377	50.66	435,532
Mississippi.....	1,629,771	280,552	273,570	554,122	50.63	366,820
Louisiana.....	1,460,237	239,209	236,828	476,037	50.25	345,127
Texas.....	3,285,474	556,481	544,153	1,100,634	50.56	795,758
Arkansas.....	1,366,119	233,414	228,334	461,748	50.55	326,918
Oklahoma.....	495,285	79,233	75,791	155,024	51.11	135,046
Indian Territory	455,624	79,579	75,789	155,368	51.22	113,108
North Central Div.:						
Ohio.....	4,302,860	575,830	564,428	1,140,258	50.50	1,256,564
Indiana.....	2,614,223	366,632	357,508	724,140	50.63	749,485
Illinois.....	5,117,036	703,277	698,791	1,402,068	50.16	1,488,996
Michigan.....	2,510,647	343,390	336,995	680,385	50.47	747,743
Wisconsin.....	2,155,441	322,068	318,098	640,166	50.31	595,354
Minnesota.....	1,857,462	275,832	270,262	546,094	50.51	537,903
Iowa.....	2,336,484	337,011	328,887	665,898	50.61	665,232
Missouri.....	3,227,214	480,869	471,159	952,028	50.51	891,098
North Dakota...	357,594	54,798	52,480	107,278	51.08	106,849
South Dakota...	443,927	70,281	67,336	137,617	51.07	124,681
Nebraska.....	1,098,139	167,385	163,155	330,540	50.64	309,055
Kansas.....	1,469,969	221,870	214,711	436,581	50.82	413,879
Western Div.:						
Montana.....	277,102	31,323	30,471	61,794	50.69	116,296
Wyoming.....	101,525	12,702	11,562	24,264	52.35	41,613
Colorado.....	574,030	71,105	70,680	141,785	50.15	197,507
New Mexico.....	205,819	32,070	30,911	62,981	50.92	58,006
Arizona.....	133,338	17,644	16,891	34,535	51.09	47,900
Utah.....	295,404	48,151	48,151	96,302	50.00	71,745
Nevada.....	40,829	4,477	4,220	8,697	51.48	17,090
Idaho.....	183,738	26,842	25,707	52,549	51.08	61,167
Washington.....	581,626	74,753	72,398	147,151	50.80	219,696
Oregon.....	437,302	58,471	56,539	115,010	50.84	152,618
California.....	1,564,286	179,898	176,759	356,657	50.44	572,434

TABLE II.

Density of population, nativity and race classification, value of manufactures, illiteracy and relations of the adult male and of the school population.

(NOTE.—The statistics in this table, except those in column 12, are from the U. S. Census of 1900).

State or Territory	The Total Population					Value of manufactured products per capita of population. (b)	The adult male population (2 years and over)				Number of chil- dren 5 to 15 years of age to every 100 persons of the total population	
	Number of per- son to a square mile	Per cent. in incor- porated places of 8,000 and over	Per cent. of native and for- eign whites and of colored				Number to every 100 children 6 to 8 years of age	Per cent. of illiterates (unable to write) among adult males			1870	1890
			Native White	Foreign White	Colored (a)			Native White	Foreign White	Negro		
United States.....	25.6	32.6	74.4	13.4	12.2	\$74.53	98.3	4.9	11.5	47.4	31.3	28.3
North Atlantic Div.	129.8	57.0	75.6	22.5	1.9	140.22	121.8	2.0	15.2	15.3	28.3	24.4
South Atlantic Div.	38.9	17.0	62.2	2.0	35.8	35.48	75.2	12.5	11.3	51.1	33.0	31.8
South Central Div.	23.1	11.4	67.2	2.5	30.3	20.44	73.1	11.1	18.8	52.5	33.9	32.8
North Central Div.	34.9	30.6	82.1	15.8	2.1	68.08	101.6	2.9	7.9	24.8	32.4	28.2
Western Division...	3.5	31.2	76.1	18.6	5.3	63.96	141.1	2.4	7.7	13.4	25.6	25.1
North Atlantic Div.:												
Maine.....	23.2	23.7	86.3	13.4	.3	84.23	135.3	3.1	21.4	17.3	28.0	23.2
New Hampshire...	45.7	38.6	78.4	21.4	.2	127.22	147.5	2.0	24.0	14.8	24.8	21.6
Vermont.....	37.6	11.2	86.7	13.0	.3	80.80	134.9	4.1	23.3	19.7	27.2	23.4
Massachusetts.....	348.9	67.0	68.8	29.9	1.3	171.99	135.4	.9	13.8	10.5	25.5	22.2
Rhode Island.....	407.0	66.1	66.6	31.2	2.2	204.60	126.3	2.0	18.2	15.4	25.7	23.5
Connecticut.....	187.5	52.0	72.1	26.1	1.8	184.04	134.6	1.0	15.6	13.1	25.9	22.9
New York.....	152.6	68.5	72.5	26.0	1.5	141.97	125.7	1.8	12.1	11.3	28.1	23.9
New Jersey.....	250.3	61.2	73.4	22.8	3.8	133.15	118.0	2.3	13.4	18.3	29.0	25.0
Pennsylvania.....	140.1	45.5	81.9	15.6	2.5	125.73	108.7	2.5	20.2	17.5	30.6	26.5
South Atlantic Div.:												
Delaware.....	94.3	41.4	75.9	7.5	16.6	101.42	110.3	7.1	17.6	42.7	31.8	26.5
Maryland.....	120.5	46.9	72.3	7.9	19.8	82.62	97.0	5.1	10.7	40.5	31.3	27.9
Dist. of Columbia.	4,645.3	100.0	61.7	7.0	31.3	101.53	138.4	.9	5.0	26.1	27.0	21.7
Virginia.....	46.2	14.7	63.3	1.0	35.7	30.91	76.4	12.2	10.5	52.5	32.4	31.6
West Virginia....	38.9	7.7	93.1	2.4	4.5	33.20	83.9	10.7	22.5	37.8	34.1	30.8
North Carolina...	39.0	5.1	66.5	.2	33.3	22.10	66.3	18.9	5.7	53.1	33.6	33.3
South Carolina...	44.4	7.5	41.2	.4	58.4	18.44	61.1	12.3	5.2	54.7	33.2	34.6
Georgia.....	37.6	11.0	52.7	.6	46.7	21.85	67.7	11.8	5.6	56.4	34.4	33.4
Florida.....	9.7	15.0	52.6	3.7	43.7	40.06	85.4	8.3	9.2	39.4	34.0	30.9
South Central Div.:												
Kentucky.....	53.7	16.9	84.4	2.3	13.3	33.22	81.8	14.3	8.6	49.5	34.4	31.0
Tennessee.....	48.4	13.4	75.3	.9	23.8	21.92	75.4	14.1	7.7	47.6	34.1	32.0
Alabama.....	35.5	7.3	53.9	.8	45.3	20.04	67.8	13.8	8.0	59.5	34.4	33.4
Mississippi.....	33.5	2.6	40.8	.5	58.7	12.08	66.2	8.1	9.5	53.2	33.7	34.0
Louisiana.....	30.4	22.8	49.1	3.7	47.2	28.14	72.5	16.9	24.6	61.3	31.1	32.6
Texas.....	11.6	11.3	73.8	5.8	20.4	17.16	72.3	5.8	25.4	45.1	34.8	33.5
Arkansas.....	24.7	5.4	70.9	1.1	28.0	16.19	70.8	10.5	6.4	44.8	34.2	33.8
Oklahoma.....	10.3	5.0	88.4	3.9	7.7	6.61	87.5	2.7	6.3	32.0	....	31.3
Indian Territory..	12.6	0.0	76.0	1.2	22.8	4.25	72.8	10.7	16.8	41.3	....	34.1
North Central Div.:												
Ohio.....	102.0	38.5	86.7	11.0	2.3	92.50	110.2	3.2	9.6	21.8	31.7	26.5
Indiana.....	70.1	24.2	92.1	5.6	2.3	64.84	103.5	4.4	9.6	27.7	33.8	27.7
Illinois.....	86.1	47.1	78.2	20.0	1.8	107.84	106.2	2.8	7.8	18.7	32.2	27.4
Michigan.....	42.2	30.9	76.9	22.3	.9	65.01	109.9	2.4	10.2	14.0	30.3	27.1
Wisconsin.....	38.0	30.7	74.6	24.9	.5	73.45	93.0	1.9	9.3	12.7	33.6	29.7
Minnesota.....	22.1	26.8	70.4	28.8	.8	50.95	98.5	1.0	6.4	6.9	32.5	29.4
Iowa.....	40.2	16.8	85.7	13.7	.6	28.43	99.9	1.6	5.2	22.0	33.1	28.5
Missouri.....	45.2	30.8	87.9	6.9	5.2	54.88	93.6	5.4	6.8	31.9	33.6	29.5
North Dakota.....	4.5	3.0	62.4	35.3	2.3	11.18	99.6	1.0	6.3	16.5	23.7	30.0
South Dakota.....	5.2	2.6	72.8	22.0	5.2	10.97	90.6	.8	4.9	16.3	23.7	31.0
Nebraska.....	13.9	15.8	82.5	16.6	.9	39.19	93.5	1.0	5.1	11.6	28.1	30.1
Kansas.....	18.0	14.0	87.7	8.6	3.7	29.60	94.8	1.7	6.4	28.1	29.8	29.7
Western Div.:												
Montana.....	1.7	27.0	67.4	25.6	7.0	100.17	188.2	.8	6.7	10.4	10.2	22.3
Wyoming.....	.9	24.1	78.3	17.9	3.8	26.11	171.5	.8	7.8	21.2	9.4	23.9
Colorado.....	5.2	38.1	81.2	16.8	2.0	66.60	139.3	2.4	7.1	13.9	22.5	24.7
New Mexico.....	1.6	0.0	85.5	6.8	7.7	13.78	92.1	23.6	30.9	16.3	31.9	30.6
Arizona.....	1.1	0.0	57.4	18.2	24.4	104.54	138.7	4.5	30.9	11.1	16.8	25.9
Utah.....	3.4	25.2	79.4	19.1	1.5	30.00	74.5	1.2	4.6	4.7	35.1	32.6
Nevada.....	.4	0.0	63.3	20.3	16.4	19.31	196.5	.8	7.0	22.9	12.6	21.3
Idaho.....	1.9	0.0	82.0	13.5	4.5	12.15	116.4	1.1	5.7	15.4	11.1	28.6
Washington.....	7.7	31.9	76.1	19.7	4.2	72.76	149.3	.5	3.9	11.5	27.0	25.8
Oregon.....	4.4	23.9	82.4	13.0	4.6	48.10	132.7	1.1	3.4	9.5	32.3	26.3
California.....	9.5	43.7	73.2	21.3	5.5	77.27	160.5	1.1	8.1	14.6	24.5	22.8

a. Including Mongolians and Indians.

b. Less cost of raw material.

TABLE III.

School ages in the several States—State school censuses.

State or Territory	Age for free attendance at the public schools	Age for compulsory attendance (a)	School Census				
			Date of latest school census reported	Age of persons enumerated	Number of persons enumerated		Total
					Boys	Girls	
North Atlantic Division:							
Maine	5-21	7-17	1903	4-21			214,725
New Hampshire (1902)	5-2	8-14	1902	5-16	35,821	35,530	71,351
Vermont	2	8-14	1903	5-18	39,462	38,771	78,233
Massachusetts	"	7-14	1902	5-15	249,714	248,552	498,266
Rhode Island	"	7-15	1904	7-15	45,017	45,099	90,116
Connecticut	2	7-16	1902	4-16			209,006
New York	5-21	8-16	1903	5-18			1,740,760
New Jersey	4 ⁵ -20	7-14	5				
Pennsylvania (1902)	6-21	8-16	1902	6-16			1,004,728
South Atlantic Division:							
Delaware (1893)	6-21	"	1893	6-21	15,827	17,758	33,585
Maryland (1902)	6-21	7 ⁸ -16	5				
Dist. of Columbia (1902)	6-17	8-14	5				
Virginia	5-21		1900	5-21	354,722	336,590	691,312
West Virginia	6-21	8-14	1903	6-21	165,505	154,224	319,729
North Carolina (1902)	6-21	6	1902	6-21	345,996	332,381	678,377
South Carolina	6-21	6	5				
Georgia	6-18	6	1903	6-18	353,608	349,525	703,133
Florida (1902)	6-21	6	1900	6-21	81,712	779,716	161,428
South Central Division:							
Kentucky	6-20	7-14	1903	6-20	304,255	291,332	595,587
Tennessee	6-21	6	1903	6-21	392,981	383,060	776,041
Alabama (1902)	7-21	6	1901	7-21			676,285
Mississippi	5-21	6	1902	5-21	314,545	313,850	628,395
Louisiana	6-18	6	1899	6-18	209,154	195,603	404,757
Texas	7-17	6	1902	8-17	386,941	372,417	759,358
Arkansas	6-21	6	1903	6-21	255,533	247,275	502,808
Oklahoma	6-21	6	1903	6-21	97,743	93,235	190,978
Indian Territory (1903) ⁵	.....	6	1901	5-21	79,915	76,501	156,416
North Central Division:							
Ohio	6-21	8-14	1903	6-21	638,898	604,893	1,243,791
Indiana	6-21	7-14	1903	6-21	396,354	371,082	767,436
Illinois	6-21	7-14	1903	6-21	810,249	790,796	1,601,045
Michigan	5-20	7-16	1903	5-20	376,552	367,983	744,535
Wisconsin	4-20	7-14	1903	4-20	384,376	374,250	758,626
Minnesota	6-21	8-16	5				
Iowa	5-21	7-14	1903	5-21	364,469	357,001	721,470
Missouri	6-20	6	1903	6-20	496,065	478,858	974,923
North Dakota	6-20	8-14	1903	6-20	58,862	54,693	113,555
South Dakota	6-21	8-14	1903	6-21			132,150
Nebraska	5-21	7-15	1903	5-21	191,544	185,324	376,868
Kansas (1902)	5-21	3 ⁸ -15	1902	5-21	257,298	249,522	506,820
Western Division:							
Montana	6-21	8-14	1903	6-21	32,813	31,810	64,623
Wyoming (1900)	6-21	7-16	"				
Colorado	6-21	8-14	1903	6-21	90,064	89,122	179,186
New Mexico	5-21	7-14	1903	5-21	37,809	34,141	71,950
Arizona	6-21	8-14	1903	6-21	13,379	12,672	26,051
Utah	6-18	8-14	1903	6-18	45,025	44,700	89,725
Nevada	6-18	8-14	1903	6-18	4,673	4,478	9,151
Idaho	5-21	8-14	1903	5-21	31,792	31,527	63,319
Washington	6-21	8-15	1903	6-21	92,710	90,582	183,292
Oregon	6-21	8-14	1903	4-20	72,835	70,835	143,757
California	6-21	8-14	1903	5-17	198,240	191,901	390,141

¹ The compulsory period here given is in many cases extended or shortened under certain circumstances.

² Not limited by law.

³ Inclusive.

⁴ 4-20 in districts maintaining kindergartens.

⁵ No state school census.

⁶ No compulsory law.

⁷ Applies only to Baltimore city and Alleghany county.

⁸ Returns imperfect.

⁹ Unmarried.

TABLE IV.

Number of pupils enrolled in the common schools at different dates and the relation of the enrollment to the school population.

State or Territory	Number of different pupils of all ages enrolled during the school year (excluding duplicate enrollment)		Per cent. of school population (i. e. of children 5 to 18 yrs of age) enrolled	
	1870-71	1902-03	1870-71	1902-03
1	2	3	4	5
United States.....	7,561,582	16,009,361	61.45	70.67
North Atlantic Division.....	2,743,344	3,776,404	77.95	69.84
South Atlantic Division.....	603,619	2,293,743	30.51	65.99
South Central Division.....	767,839	3,170,312	34.17	64.60
North Central Division.....	3,300,660	5,860,368	76.87	75.49
Western Division.....	146,120	908,534	54.77	82.46
North Atlantic Division:				
Maine.....	1152,600	132,415	187.35	81.20
New Hampshire.....	71,957	2,967,250	91.31	2,873.76
Vermont.....	465,384	66,497	.....	81.89
Massachusetts.....	273,661	485,483	72.34	73.53
Rhode Island.....	134,000	69,824	159.24	65.36
Connecticut.....	113,588	159,935	80.83	72.99
New York.....	1,028,110	1,256,874	82.98	68.66
New Jersey.....	169,430	844,457	63.20	68.32
Pennsylvania.....	834,614	1,193,669	76.35	68.18
South Atlantic Division:				
Delaware.....	20,058	536,895	50.04	573.32
Maryland.....	115,683	9224,004	46.70	665.18
District of Columbia.....	15,157	48,745	41.60	76.61
Virginia.....	131,088	375,601	32.34	61.94
West Virginia.....	76,999	240,718	49.47	76.54
North Carolina.....	1115,000	3464,669	131.23	370.60
South Carolina.....	66,056	288,713	27.28	59.73
Georgia.....	49,578	502,014	11.89	64.33
Florida.....	14,000	8112,384	21.21	864.16
South Central Division:				
Kentucky.....	1178,457	1501,482	.....	172.52
Tennessee.....	1140,000	492,776	132.00	73.50
Alabama.....	141,312	3365,171	40.36	256.85
Mississippi.....	117,000	403,647	40.60	72.84
Louisiana.....	57,639	208,737	24.78	43.85
Texas.....	63,504	700,136	21.00	63.61
Arkansas.....	69,927	337,589	40.29	73.11
Oklahoma.....	.....	136,159	.....	87.83
Indian Territory ⁶.....	.....	24,615	.....	15.84
North Central Division:				
Ohio.....	719,372	829,620	84.04	72.76
Indiana.....	450,057	560,523	78.64	77.41
Illinois.....	672,787	969,414	81.01	69.14
Michigan.....	292,466	514,093	79.66	75.56
Wisconsin.....	265,285	454,186	73.92	70.95
Minnesota.....	113,983	415,498	75.92	76.09
Iowa.....	341,938	550,202	84.44	82.63
Missouri.....	330,070	704,193	56.03	73.97
North Dakota.....	11,160	90,157	139.26	84.04
South Dakota.....	11,160	8105,691	139.26	876.80
Nebraska.....	23,265	277,519	58.79	83.96
Kansas.....	89,777	3389,272	74.22	889.16
Western Division:				
Montana.....	11,657	44,881	70.24	72.63
Wyoming.....	1450	614,512	145.34	659.81
Colorado.....	4,357	131,200	42.28	92.53
New Mexico.....	11,320	37,972	14.42	60.29
Arizona.....	.....	20,008	0.00	57.94
Utah.....	16,992	73,449	53.36	76.32
Nevada.....	3,106	7,362	53.97	84.65
Idaho.....	906	48,181	46.06	91.69
Washington.....	15,000	149,753	169.00	101.77
Oregon.....	21,000	92,390	67.73	80.33
California.....	91,332	288,776	63.63	80.97

¹ Approximate.² Pupils who attended two weeks or more.³ In 1901-2.⁴ Pupils of legal school age only.⁵ In 1900-01.⁶ Highest number enrolled.⁷ Returns imperfect.

TABLE V.

The school enrollment of 1902-3, classified by sex. Percentage of the total population enrolled at different dates.

State or Territory	Number of different pupils of all ages enrolled			Per cent. of the total population enrolled	
	Boys	Girls	Total	1870-1871	1902-1903
1	2	3	4	5	6
United States.....	18,036,780	17,972,581	16,009,361	19.14	20.04
North Atlantic Division.....	11,896,132	11,880,272	3,776,404	21.95	17.06
South Atlantic Division.....	11,137,008	11,156,735	2,293,743	10.05	20.98
North Central Division.....	12,958,314	12,902,054	5,860,368	24.80	21.32
South Central Division.....	11,585,790	11,584,522	3,170,312	11.56	21.22
Western Division.....	1459,536	1448,998	908,534	13.99	20.67
North Atlantic Division:					
Maine.....			132,415	24.25	18.84
New Hampshire.....	² 334,105	² 333,145	² 367,250	22.41	² 315.93
Vermont.....	33,659	32,838	66,497	⁴ 19.77	19.16
Massachusetts.....			485,483	18.31	16.32
Rhode Island.....	34,833	34,991	69,824	15.11	15.36
Connecticut.....			159,935	20.83	16.72
New York.....	⁶ 633,171	⁶ 623,703	1,256,874	23.18	⁵ 16.41
New Jersey.....	172,621	171,836	344,457	18.26	17.08
Pennsylvania.....	597,180	596,489	1,193,669	23.24	18.07
South Atlantic Division:					
Delaware.....			⁶ 36,895	15.79	⁶ 19.43
Maryland.....			⁷ 224,004	14.55	⁷ 18.19
District of Columbia.....	23,082	25,663	48,745	11.23	16.62
Virginia.....	189,640	185,961	375,601	10.47	19.57
West Virginia.....	124,381	116,337	240,718	16.85	23.57
North Carolina.....	³ 224,212	³ 230,457	⁴ 464,669	10.45	³ 23.51
South Carolina.....	135,846	152,867	288,713	9.05	20.67
Georgia.....	245,608	256,406	502,014	4.08	21.49
Florida.....	⁵ 55,374	57,010	⁵ 112,384	7.19	⁵ 19.82
South Central Division:					
Kentucky.....	⁵ 250,521	⁵ 250,961	⁵ 501,482	13.21	⁵ 22.48
Tennessee.....	248,930	243,846	492,776	10.90	23.52
Alabama.....			³ 365,171	13.85	³ 18.99
Mississippi.....	199,404	204,243	403,647	13.70	24.77
Louisiana.....	104,527	104,210	208,737	7.73	14.29
Texas.....	348,233	351,903	700,136	7.26	21.31
Arkansas.....	170,595	166,994	337,589	13.72	24.71
Oklahoma.....	68,618	67,541	136,159	.....	27.49
Indian Territory ⁸			24,615	.....	5.40
North Central Division:					
Ohio.....	421,005	408,615	829,620	26.50	19.28
Indiana.....	282,621	277,902	560,523	26.34	21.44
Illinois.....	487,191	482,223	969,414	25.99	18.94
Michigan.....	258,188	255,905	514,093	23.98	20.48
Wisconsin.....			454,186	24.60	21.07
Minnesota.....			415,498	24.47	22.37
Iowa.....			⁵ 550,202	28.19	25.55
Missouri.....	353,687	350,506	704,193	18.74	21.82
North Dakota.....	46,369	43,788	90,157	9.34	25.21
South Dakota.....	⁵ 54,428	⁵ 51,263	⁵ 105,691	9.34	³ 23.81
Nebraska.....	140,596	136,923	277,519	16.61	25.27
Kansas.....	³ 197,877	³ 191,395	³ 389,272	22.28	³ 26.48
Western Division:					
Montana.....			44,881	7.54	16.20
Wyoming.....	⁶ 7,350	⁶ 7,153	⁶ 14,512	4.55	⁶ 14.29
Colorado.....	65,353	65,847	131,200	9.33	22.86
New Mexico.....	20,936	17,036	37,972	1.40	18.45
Arizona.....	10,317	9,691	20,008	0.00	15.01
Utah.....	36,704	36,795	73,499	18.61	24.88
Nevada.....	3,718	3,644	7,362	7.04	18.03
Idaho.....	22,888	25,293	48,191	5.59	26.22
Washington.....	75,562	74,191	149,753	18.62	25.75
Oregon.....	47,107	45,283	92,390	21.63	21.13
California.....	146,878	141,898	288,776	15.61	18.46

¹ Estimated in part.² Pupils who attended two weeks or more.³ In 1901-02.⁴ Pupil of legal school age.⁵ Approximate.⁶ In 1899-1900.⁷ In 1900-01.⁸ Set of a few pupils in cities estimated.⁹ Returns imperfect.

TABLE VI.

Per cent. of the school population (*i. e.*, children 5 to 18 years of age) enrolled in the public schools for a period of years.

Yea.	United States	North Atlantic Division	South Atlantic Division	South Central Division	North Central Division	Western Division
1870-71.....	61.45	77.95	30.51	34.17	76.87	54.77
1871-72.....	62.20	77.33	32.27	37.94	77.04	54.43
1872-73.....	62.36	76.79	35.86	38.67	75.97	57.52
1873-74.....	64.40	77.77	42.10	40.82	76.98	61.04
1874-75.....	65.54	78.59	44.61	42.47	77.54	64.39
1875-76.....	64.70	78.55	46.72	37.36	77.05	66.37
1876-77.....	63.92	76.83	47.02	38.51	75.60	66.12
1877-78.....	65.75	77.09	48.85	43.50	77.38	66.26
1878-79.....	64.64	76.18	46.72	44.71	75.28	65.63
1879-80.....	65.50	75.17	50.74	46.43	75.84	64.96
1880-81.....	65.03	74.28	51.49	47.03	74.59	64.82
1881-82.....	65.03	74.56	51.90	47.02	74.15	65.93
1882-83.....	66.39	74.15	54.30	50.68	75.13	67.05
1883-84.....	66.96	72.83	56.25	53.59	75.06	68.01
1884-85.....	67.96	73.23	57.17	56.57	75.46	68.53
1885-86.....	68.14	72.63	57.68	56.82	76.08	68.03
1886-87.....	67.98	72.23	58.98	56.21	75.77	67.97
1887-88.....	68.33	71.60	58.68	58.67	75.96	68.53
1888-89.....	68.20	70.60	58.40	58.28	76.63	69.39
1889-90.....	68.61	70.45	59.22	60.14	76.46	70.01
1890-91.....	69.40	70.04	60.15	63.01	76.25	75.49
1891-92.....	69.51	69.78	59.50	63.72	76.30	77.98
1892-93.....	69.70	68.99	61.94	63.92	76.23	77.16
1893-94.....	71.32	70.45	63.08	66.00	78.04	77.45
1894-95.....	71.54	71.53	62.21	65.83	78.17	79.32
1895-96.....	71.80	71.57	62.46	66.75	78.16	79.72
1896-97.....	72.36	72.12	64.49	67.75	78.06	78.27
1897-98.....	72.68	71.78	66.25	67.36	78.66	78.00
1898-99.....	71.96	71.69	64.93	66.54	77.75	77.85
1899-1900.....	72.43	70.86	65.73	67.28	78.65	79.51
1900-1901.....	71.67	70.71	66.65	65.22	77.36	80.69
1901-02.....	71.45	70.31	66.55	65.12	76.85	82.49
1902-3a.....	70.67	69.84	65.99	64.60	75.49	82.46

a. Subject to correction.

TABLE VII.

The average daily attendance at various periods and its relation in 1902-3 to the enrollment.

State or Territory	Average number of pupils actually present at school each day		Number attending daily for each 100 enrolled in 1902-3
	1870-71	1902-03	
1	2	6	7
United States.....	4,545,317	11,054,502	69.16
North Atlantic Division.....	1,827,208	2,795,448	74.02
South Atlantic Division.....	368,111	1,444,014	62.95
South Central Division.....	535,632	2,039,212	64.32
North Central Division.....	1,911,720	4,133,601	70.53
Western Division.....	102,646	642,227	70.69
North Atlantic Division:			
Maine.....	100,392	97,424	73.57
New Hampshire.....	45,150	149,280	173.28
Vermont.....	244,100	48,696	73.23
Massachusetts.....	201,750	388,616	80.05
Rhode Island.....	22,485	50,757	72.69
Connecticut.....	62,683	119,231	74.55
New York.....	493,648	928,335	73.86
New Jersey.....	86,812	229,244	66.55
Pennsylvania.....	567,188	883,865	74.05
South Atlantic Division:			
Delaware.....	12,700	2325,300	2368.57
Maryland.....	56,435	135,515	160.50
District of Columbia.....	10,261	38,038	78.03
Virginia.....	77,402	224,769	59.84
West Virginia.....	51,336	155,436	64.57
North Carolina.....	273,000	1269,003	157.89
South Carolina.....	244,700	209,389	72.52
Georgia.....	31,337	310,400	61.83
Florida.....	10,900	176,164	167.77
South Central Division:			
Kentucky.....	120,866	2309,836	261.78
Tennessee.....	289,000	342,631	69.53
Alabama.....	107,666	1240,000	165.72
Mississippi.....	290,000	233,175	57.77
Louisiana.....	240,500	155,794	74.64
Texas.....	241,000	444,669	63.51
Arkansas.....	246,600	213,372	63.20
Oklahoma.....		84,905	62.36
Indian Territory ⁵		214,830	260.25
North Central Division:			
Ohio.....	432,452	614,305	74.05
Indiana.....	295,071	417,017	74.40
Illinois.....	341,686	755,208	77.90
Michigan.....	2193,000	401,182	78.04
Wisconsin.....	2132,000	282,086	62.11
Minnesota.....	50,694	260,872	62.79
Iowa.....	211,562	358,438	65.15
Missouri.....	187,024	465,131	66.05
North Dakota.....	21,040	56,639	62.82
South Dakota.....	1,040	272,846	168.92
Nebraska.....	214,300	176,680	63.66
Kansas.....	52,891	1273,197	170.18
Western Division:			
Montana.....	21,100	31,471	70.12
Wyoming.....	2250	239,650	2366.50
Colorado.....	2,611	87,996	67.07
New Mexico.....	1880	26,065	68.64
Arizona.....	0	12,125	60.60
Utah.....	12,819	57,045	77.61
Nevada.....	21,800	25,300	271.95
Idaho.....	600	34,384	71.36
Washington.....	23,300	101,088	67.50
Oregon.....	215,000	64,219	69.51
California.....	64,286	212,884	73.72

¹ 1901-02.

² Approximately.

³ 1899-1900.

⁴ In 1900-01.

⁵ Returns imperfect.

TABLE VIII.

(1) Average length of school term at various periods; (2) aggregate number of days' schooling given to all pupils; (3) the same compared with the school population and the enrollment (columns 8 and 9).

State or Territory	Average number of days the schools were kept during the year (a)		Aggregate number of days' schooling given in 1902-03	Average number of days' schooling given for every child 5 to 18 years of age in 1902-03	Average number of days attended by each pupil enrolled in 1902-03
	1870-71	1902-03			
1	2	6	7	8	9
United States.....	132.1	147.2	1,627,405,037	71.8	101.7
North Atlantic Division.....	152.0	178.5	498,978,563	92.3	132.1
South Atlantic Division.....	97.4	118.0	170,377,602	49.0	74.3
South Central Division.....	91.6	105.6	215,423,191	43.9	68.0
North Central Division.....	133.9	156.9	648,680,902	85.6	110.7
Western Division.....	119.2	146.3	93,944,779	83.3	103.4
North Atlantic Division:					
Maine.....	98.	143.	13,931,632	85.4	105.2
New Hampshire.....	70.	² 140.05	6,901,664	² 75.7	² 102.6
Vermont.....	115.6	155.	7,547,917	93.0	113.5
Massachusetts.....	169.	186.	72,282,576	109.5	148.9
Rhode Island.....	170.	190.	9,782,580	91.6	140.1
Connecticut.....	172.4	188.83	22,514,390	102.8	140.8
New York.....	176.	177.	175,118,017	95.7	139.3
New Jersey.....	178.	182.	43,824,651	86.9	127.2
Pennsylvania.....	127.2	166.4	147,075,136	84.0	123.2
South Atlantic Division:					
Delaware.....	132.	³ 170.1	³ 44,303,530	³ 85.5	³ 116.6
Maryland.....	183.	⁵ 190.	525,747,850	⁵ 74.9	⁵ 114.9
District of Columbia.....	200.	174.	6,618,612	104.0	135.8
Virginia.....	93.2	122.	27,421,818	45.2	73.0
West Virginia.....	76.8	123.	19,118,628	60.8	79.4
North Carolina.....	⁴ 50.	² 86.9	² 23,366,983	² 35.5	² 50.3
South Carolina.....	⁴ 100.	93.	19,207,690	39.7	66.5
Georgia.....	59.	118.	36,627,200	46.9	73.0
Florida.....	.....	² 94.	² 7,965,291	² 45.5	² 70.9
South Central Division:					
Kentucky.....	⁴ 110.	90.	⁴ 27,885,240	40.3	⁴ 55.6
Tennessee.....	⁴ 77.	96.	32,892,576	49.1	66.7
Alabama.....	66.5	² 102.5	² 24,600,000	² 38.3	² 67.4
Mississippi.....	110.	123.	28,680,525	51.8	71.1
Louisiana.....	⁴ 65.	130.	20,253,220	42.5	97.0
Texas.....	⁴ 140.	116.	51,572,823	46.9	73.7
Arkansas.....	.....	92.	19,630,224	42.5	58.1
Oklahoma.....	.....	89.	7,556,545	48.7	55.5
Indian Territory ⁶.....	.....	158.6	² 3,352,038	15.1	⁴ 95.6
North Central Division:					
Ohio.....	165.	165.	101,360,325	88.9	122.2
Indiana.....	98.5	² 146.	⁴ 60,884,482	² 84.1	⁴ 108.6
Illinois.....	146.7	160.	120,833,317	86.2	124.6
Michigan.....	140.	165.	66,195,030	97.3	128.8
Wisconsin.....	155.	166.	50,969,057	79.6	112.2
Minnesota.....	⁴ 83.	158.6	41,356,412	74.4	99.5
Iowa.....	130.	160.	57,350,080	86.1	104.2
Missouri.....	90.	144.	67,725,996	71.1	96.2
North Dakota.....	³ 75.	150.	8,495,850	79.2	94.2
South Dakota.....	³ 75.	² 129.	² 9,643,178	² 70.1	² 91.2
Nebraska.....	72.	138.	29,512,652	89.3	106.3
Kansas.....	116.	² 125.75	² 34,354,523	² 78.7	² 88.3
Western Division:					
Montana.....	⁴ 89.	³ 107.	⁴ 3,367,397	³ 54.5	⁴ 75.0
Wyoming.....	² 00.	³ 110.	³ 41,064,000	³ 43.9	³ 73.3
Colorado.....	92.	153.12	13,473,948	95.0	102.7
New Mexico.....	⁴ 111.	88.	2,293,720	36.4	60.4
Arizona.....	0.	128.	1,552,000	44.9	77.6
Utah.....	152.	151.	8,007,342	83.1	108.9
Nevada.....	142.	² 155.6	⁴ 824,680	² 94.8	⁴ 112.0
Idaho.....	⁴ 45.	² 124.2	⁴ 4,270,493	² 81.3	⁴ 88.6
Washington.....	80.	116.2	11,746,426	79.8	78.4
Oregon.....	⁴ 90.	² 158.	⁴ 9,877,189	² 85.9	⁴ 106.9
California.....	123.	176.	37,467,584	105.1	129.7

¹ Certain States report their school term in months; these months have been reduced to days by multiplying by 20 in each case.

² In 1901-02.

³ In 1899-1900.

⁴ Approximately.

⁵ In 1900-01.

⁶ Returns imperfect.

TABLE IX.

Number and sex of teachers—Percentage of male teachers.

State or Territory	Whole number of different teachers employed			Percentage of male Teachers	
	Male	Female	Total	1870-71	1902-3
United States..... ¹	117,035	332,252	449,287	41.0	26.0
North Atlantic Division.....	17,388	95,005	112,393	26.2	15.5
South Atlantic Division.....	18,778	32,685	51,463	63.8	36.5
South Central Division.....	29,465	39,076	68,541	67.5	43.0
North Central Division.....	45,673	144,087	189,760	43.2	24.1
Western Division.....	5,731	21,399	27,130	45.9	21.1
North Atlantic Division:					
Maine.....	1801	15,863	6,664	124.4	112.0
New Hampshire.....	2207	22,169	22,376	15.0	28.7
Vermont.....	356	2,651	3,007	16.5	11.8
Massachusetts.....	1,273	13,026	14,299	12.7	8.9
Rhode Island.....	171	1,865	2,036	120.4	8.3
Connecticut.....	1400	14,043	4,443	122.1	19.0
New York.....	4,909	34,916	39,825	22.9	12.3
New Jersey.....	1,028	7,266	8,294	32.5	12.4
Pennsylvania.....	8,243	23,206	31,449	42.8	26.2
South Atlantic Division:					
Delaware.....	3210	3621	3831	129.9	325.3
Maryland.....	41,071	43,965	45,036	45.0	421.3
District of Columbia.....	173	1,198	1,371	8.2	12.6
Virginia.....	2,377	6,667	9,044	64.5	26.3
West Virginia.....	3,854	3,508	7,362	79.0	52.3
North Carolina.....	23,976	24,755	28,731	173.2	245.5
South Carolina.....	12,588	13,359	5,947	62.4	143.5
Georgia.....	3,630	6,712	10,342	71.4	35.1
Florida.....	2899	11,900	32,799	65.7	232.1
South Central Division:					
Kentucky.....	14,513	15,936	110,499	166.0	143.2
Tennessee.....	4,652	5,080	9,732	175.0	47.8
Alabama.....	23,103	23,200	26,363	66.8	249.2
Mississippi.....	3,028	5,894	8,922	69.8	33.9
Louisiana.....	1,329	3,479	4,818	50.9	27.8
Texas.....	7,024	9,636	16,650	177.3	42.2
Arkansas.....	4,198	3,276	7,474	175.6	56.2
Oklahoma.....	1,342	2,096	3,428	.....	39.0
Indian Territory ²	1266	1489	755	.....	135.2
North Central Division:					
Ohio.....	9,561	17,090	26,651	43.2	35.9
Indiana.....	6,760	9,281	16,041	60.5	42.1
Illinois.....	6,504	20,596	27,100	43.5	24.0
Michigan.....	2,795	13,879	16,674	26.3	16.8
Wisconsin.....	2,059	11,492	13,551	128.8	15.2
Minnesota.....	1,769	10,850	12,619	33.7	14.0
Iowa.....	3,733	25,554	29,287	39.0	12.7
Missouri.....	5,447	11,476	16,923	65.3	32.2
North Dakota.....	1,162	3,682	4,844	124.7	24.0
South Dakota.....	21,007	24,045	25,052	124.7	119.9
Nebraska.....	1,490	7,819	9,309	51.9	16.0
Kansas.....	3,386	28,323	211,709	47.2	228.9
Western Division:					
Montana.....	216	1,052	1,268	160.3	17.0
Wyoming.....	389	3481	3570	128.6	315.6
Colorado.....	744	3,275	4,019	48.8	18.5
New Mexico.....	391	402	793	191.7	49.3
Arizona.....	115	359	474	.....	24.3
Utah.....	556	1,106	1,692	55.0	33.5
Nevada.....	28	290	318	32.4	8.8
Idaho.....	365	969	1,334	164.3	27.4
Washington.....	1,069	3,376	4,445	146.5	24.0
Oregon.....	883	3,031	3,914	151.7	22.6
California.....	1,275	7,058	8,333	40.0	15.3

¹ Approximately.² In 1901-02.³ 1899-1900.⁴ In 1900-01.⁵ Returns imperfect.

TABLE X.

Teachers' wages—Number of schoolhouses—Value of school property—Private school enrollment.

State or Territory	Average monthly salaries of Teachers		Number of buildings used as school houses (a)	Estimated value of all public school property	* Private Schools		Per cent. of pupils in private schools
	Male	Female			Number of pupils enrolled	Total public and private enrollment	
1	2	3	4	5	6	7	8
United States.....	\$49.98	\$40.50	256,789	\$643,903,228	1,204,700	17,214,061	7.00
North Atlantic Division.	\$58.64	\$39.50	42,951	267,074,473	449,400	4,225,804	10.63
South Atlantic Division.	\$30.84	\$29.02	38,686	25,473,950	103,200	2,396,943	4.31
South Central Division.	\$42.94	\$34.79	54,045	31,384,806	152,200	3,322,512	4.58
North Central Division.	53.96	41.09	106,636	266,332,992	447,200	6,307,568	7.09
Western Division.....	70.82	59.35	14,471	53,637,007	52,700	961,234	5.48
North Atlantic Division:							
Maine.....	37.37	27.60	3,949	4,698,390			
New Hampshire.....	³⁷ 43.58	³⁴ 29.11	³¹ 1,847	³⁴ 1,155,616	³¹ 11,543	³⁷ 8,793	³¹ 14.66
Vermont.....	47.16	29.68	2,244	2,884,136	4,000	70,497	5.67
Massachusetts.....	145.27	54.61	⁵⁴ 289	49,934,764	92,525	578,008	16.01
Rhode Island.....	119.06	51.90	544	5,758,485	18,343	88,167	20.08
Connecticut.....	102.44	45.26	1,061	12,321,392	29,548	189,483	15.59
New York.....			11,863	99,668,241	188,484	1,445,358	13.04
New Jersey.....			1,953	19,129,748	⁶⁷ 4,453	⁶³ 70,028	⁶¹ 2.82
Pennsylvania.....	44.82	34.11	14,661	68,523,701	41,906	1,235,575	3.39
South Atlantic Division:							
Delaware.....	⁶⁷ 36.60	⁷⁸ 34.08	⁶⁵ 50	⁶¹ 1,043,997			
Maryland (1900-01).....			2,535	³⁴ 790,000			
District of Columbia..	⁹⁹ 4.48	⁹⁶ 4.31	143	5,253,594	¹¹⁵ 5,000	¹⁴⁷ 4,464	¹¹⁰ 10.53
Virginia.....	34.56	27.20	7,412	3,907,064	¹²¹⁵ 5,500	³⁹¹ 1,000	¹²³ 9.66
West Virginia.....			6,327	4,526,185	¹³¹ 894	¹²² 20,709	¹²⁰ 8.66
North Carolina.....	26.72	24.28	³⁷ 293	1,629,803	¹⁴²⁶ 198	¹⁴³⁶ 1,556	¹⁴⁷ 2.55
South Carolina.....	⁹²⁵ 96	⁹²³ 20	5,008	⁸¹ 1,000,000			
Georgia.....			7,082	2,256,403	¹³²⁷ 285	¹⁵⁴⁴ 2,932	¹⁵⁶ 6.16
Florida.....	³³⁹ 68	³³³ 67	³² 336	1,066,904	³² 000	³¹¹⁴ 384	³¹ 7.55
South Central Division:							
Kentucky.....	³⁵⁰ 90	³³⁹ 18	8,561	⁸⁶ 117,962	17,480	518,962	3.37
Tennessee.....	41.00	33.70	7,274	4,052,891	32,352	525,128	6.16
Alabama.....	³¹ 0.00	³²⁷ 0.00	³¹⁶⁷ 7,058	³² 200,000	⁷²⁶ 722	⁶³⁸⁸ 722	⁶⁶ 8.87
Mississippi.....	33.54	29.46	7,249	2,190,000	7,500	411,147	1.82
Louisiana.....	36.25	31.43	⁵³ 433	¹²² 680,000	14,497	223,234	6.49
Texas.....	56.00	42.30	³¹ 1,326	³⁹ 288,557			
Arkansas.....	¹⁸³⁶ 17	¹⁸³² 75	5,478	3,126,646	8,339	345,928	2.41
Oklahoma.....	¹⁷³¹ 93	¹⁷²⁶ 20	3,090	³¹ 618,850			
Indian Territory.....			⁵⁸ 576	²⁰ 109,900	²⁴ 968	29,583	²¹ 16.79
North Central Division:							
Ohio.....	45.00	40.00	13,115	50,006,648	34,288	863,908	3.97
Indiana.....	³⁶⁶ 80	³⁴⁸ 00	9,375	24,840,870	²⁴ 500	²²⁵⁶ 1,231	²²⁰ 8.80
Illinois.....	65.83	55.62	12,880	56,612,707	³¹⁴⁴ 471	^{31,116} 312	³¹² 9.94
Michigan.....	54.76	38.72	8,201	23,634,768	50,788	564,881	8.99
Wisconsin.....	81.93	40.78	7,361	17,451,887	²³²⁹ 808	443,994	²³⁸ 6.16
Minnesota.....	55.40	38.87	7,771	20,195,785	²⁴²⁰ 073	²⁴³⁷ 2,165	²⁴⁵ 3.39
Iowa.....	45.99	32.60	13,968	21,203,610	49,591	599,793	³³⁸ 2.27
Missouri.....	44.55	42.00	10,551	23,339,117	53,405	757,598	7.05
North Dakota.....	45.46	39.00	3,180	3,288,721			
South Dakota.....	³⁴⁰ 03	³³³ 52	³⁴ 380	³³ 643,384	¹³¹ 888	¹³⁸⁹ 914	¹³² 10.10
Nebraska.....	52.03	40.84	6,748	10,455,045			
Kansas.....	³⁴⁴ 24	³³⁶ 55	³⁹ 106	³¹¹ 660,470			

* The reports of private schools are more or less incomplete, and the number of pupils as given may be taken to represent the minimum number of private pupils in the states furnishing this item. In forming the totals the states not reporting are estimated.

1 Including buildings rented.

2 Average for those states reporting salaries.

3 In 1901-02.

4 High-school teachers' wages not included.

5 Number of schools.

6 In 1899-1900.

7 In 1889-90.

8 Approximately.

9 In 1897-98.

10 Total cost of sites and buildings.

11 In 1895-96.

12 Estimated.

13 In 1893-94.

14 In 1891-92.

15 In 1892-93.

16 In 1896-97.

17 In 1898-99.

18 Excluding the wages of teachers holding state certificates.

19 Returns imperfect.

20 "Public schools" property only.

21 Includes some college students.

22 In 1900-01.

23 Statistics incomplete.

24 In 1894-95.

TABLE X.—Continued.

State or Territory	Average monthly salaries of Teachers		Number of build-ings used as school houses (a)	Estimated value of all public school property	* Private Schools		Per cent. of pupils in private schools
	Male	Female			Number of pupils en-rolled	Total public and private enrollment	
Western Division :							
Montana	76.89	52.04	734	4,832,014	1,839	46,720	3.94
Wyoming	173.68	143.36	1524	1453,607	2175	11,428	21.53
Colorado	69.63	53.04	1,891	7,868,118	2,018	133,218	1.51
New Mexico	364.77	364.77	4694	716,515	5,421	43,393	12.49
Arizona	80.33	67.53	464	758,129	1,403	21,411	6.55
Utah	71.11	48.31	667	3,383,018	2,814	579,345	3.55
Nevada	108.69	63.64	235	304,690	36343	37,295	364.70
Idaho	63.00	53.00	985	1,577,398	.....	.....	.....
Washington	57.54	46.82	2,365	7,737,672	5,981	155,734	3.84
Oregon	51.30	40.02	2,159	3,894,083	5,345	97,735	5.47
California	97.21	80.44	3,753	22,111,763	124,350	302,680	318.04

¹ 1899-1900.² 1894-95.³ 1901-02.⁴ Number of schools.⁵ In 1900-01.

* Reported by school census enumerators as attending private schools.

⁷ Includes only children 5 to 17 (as reported by school census enumerators) who have attended private, but not public, school during the year.

TABLE XI.

(1) Length of school term. (2) The aggregate number of days' schooling given compared with the school population.

Year	Average length of school term, in days						Average number of days school- ing given for every child 5 to 13 years of age					
	The United States	North Atlantic Division	South Atlantic Division	South Central Division	North Central Division	Western Division	The United States	North Atlantic Division	South Atlantic Division	South Central Division	North Central Division	Western Division
1870-71....	132.1	152.0	97.4	91.6	133.9	119.2	48.7	70.2	18.1	21.8	59.6	45.9
1871-72....	133.4	151.9	103.4	97.7	136.1	121.8	49.5	68.9	20.3	25.8	59.8	46.0
1872-73....	129.1	154.6	97.4	89.1	129.6	118.3	47.8	67.9	21.7	23.4	56.8	45.0
1873-74....	128.8	154.8	95.6	81.1	132.6	119.0	49.6	70.4	24.5	21.9	59.8	46.1
1874-75....	130.4	158.7	95.2	81.0	134.6	132.5	51.0	72.9	26.1	23.5	60.2	51.6
1875-76....	133.1	158.0	95.6	82.5	139.1	130.3	51.4	73.7	26.8	20.1	62.2	54.4
1876-77....	132.1	157.2	91.4	80.3	139.8	130.1	51.1	73.6	26.3	19.8	62.3	54.3
1877-78....	132.0	157.6	89.7	86.7	140.1	129.9	53.2	75.6	26.8	24.3	64.3	54.5
1878-79....	130.2	160.1	88.6	81.9	136.4	132.0	52.0	75.0	25.7	25.9	62.3	56.7
1879-80....	130.3	159.2	92.4	79.2	139.8	129.2	53.1	74.5	29.3	24.2	64.4	54.9
1880-81....	130.1	158.7	92.4	82.1	138.8	133.8	52.0	72.2	28.5	25.0	62.7	56.9
1881-82....	131.2	160.6	95.9	82.5	137.1	136.2	52.9	73.3	30.6	25.6	63.2	58.0
1882-83....	129.8	161.0	95.9	82.5	137.1	132.6	53.8	74.4	32.0	26.8	63.9	57.3
1883-84....	129.1	156.0	95.6	85.9	138.6	133.8	55.5	72.5	32.7	30.0	67.7	61.6
1884-85....	130.7	163.1	93.4	97.5	139.1	131.8	56.8	77.2	33.7	31.4	67.3	58.3
1885-86....	130.4	161.6	93.4	86.9	140.4	130.8	57.3	76.7	33.7	32.0	68.7	59.6
1886-87....	131.3	165.9	95.3	87.5	139.5	131.6	57.7	77.8	34.8	32.1	68.7	59.1
1887-88....	132.3	164.4	95.7	87.6	144.0	130.7	58.7	76.8	35.5	33.6	71.3	57.3
1888-89....	133.7	164.1	95.0	88.9	147.5	135.7	58.9	76.7	35.4	34.0	71.6	61.7
1889-90....	134.7	166.6	99.9	88.2	148.0	135.0	59.2	76.8	37.3	33.9	71.9	61.2
1890-91....	135.7	168.1	103.8	92.0	145.8	136.9	60.7	78.1	38.1	35.8	73.2	65.9
1891-92....	136.9	169.1	105.3	94.1	146.8	139.1	61.5	78.3	38.2	37.7	73.6	71.1
1892-93....	136.3	169.6	103.4	93.0	146.6	138.8	62.3	78.7	39.2	37.5	75.1	70.8
1893-94....	139.5	172.3	108.3	97.5	150.2	137.1	65.9	82.2	42.4	41.3	79.1	72.4
1894-95....	139.5	172.8	106.5	92.8	150.8	142.4	66.9	84.8	42.0	39.0	81.0	77.6
1895-96....	140.5	175.5	107.8	92.2	151.9	142.0	68.1	86.8	42.1	39.8	82.3	78.7
1896-97....	142.0	173.3	110.9	96.3	152.8	148.6	69.7	88.9	43.0	42.3	83.1	82.5
1897-98....	143.0	174.3	113.8	97.4	152.8	151.7	71.2	90.4	46.9	42.5	84.8	82.1
1898-99....	143.0	174.0	112.3	98.4	154.5	141.6	70.0	90.0	43.6	43.3	83.3	76.3
1899-1900....	144.3	177.5	112.1	99.8	155.9	141.5	71.8	91.0	45.4	44.8	85.7	76.7
1900-01....	143.7	177.1	113.2	98.2	155.6	140.3	70.3	90.4	47.7	42.1	83.0	77.0
1901-02....	144.7	177.4	115.0	101.2	155.1	144.3	71.9	91.7	48.5	43.8	84.7	82.4
1902-03a...	147.2	178.5	118.0	105.6	156.9	146.3	71.8	92.3	49.0	43.9	83.6	85.3

a Subject to correction.

TABLE XIV

Progress of school expenditure.

State or Territory	Average amount expended for Schools		Expended per capita of total population	
	1870-71	1902-03	1870-71	1902-03
United States	2 \$69,107,612	6 \$251,457,625	7 \$1.75	11 \$3.15
North Atlantic Division.....	29,796,835	98,362,976	2.38	4.44
South Atlantic Division.....	3,781,581	14,686,717	.63	1.34
South Central Division.....	4,854,834	18,193,734	.73	1.22
North Central Division.....	28,430,033	99,115,625	2.14	3.61
Western Division.....	2,244,329	21,098,573	2.15	4.80
North Atlantic Division:				
Maine.....	950,662	1,952,083	1.51	2.78
New Hampshire.....	418,545	1,167,464	1.51	2.77
Vermont.....	499,961	1,093,238	1.51	3.15
Massachusetts.....	5,579,363	15,170,070	3.73	5.10
Rhode Island.....	461,160	1,856,376	2.05	4.08
Connecticut.....	1,496,981	3,526,615	2.74	3.69
New York.....	9,607,904	41,418,095	2.17	5.41
New Jersey.....	2,302,341	7,824,147	2.48	3.88
Pennsylvania.....	8,479,918	24,354,888	2.36	3.69
South Atlantic Division:				
Delaware.....	153,509	345,670	1.21	32.39
Maryland.....	1,214,729	42,549,497	1.53	42.07
District of Columbia.....	373,535	1,540,279	2.77	5.25
Virginia.....	587,472	2,137,365	.47	1.11
West Virginia.....	577,719	2,403,555	1.26	2.35
North Carolina.....	177,498	1,523,041	.16	.77
South Carolina.....	275,688	1,046,144	.38	.75
Georgia.....	292,000	2,240,247	.24	.50
Florida.....	129,431	1792,919	.66	11.40
South Central Division:				
Kentucky.....	21,075,000	22,682,863	2.80	21.19
Tennessee.....	2758,000	2,159,444	2.59	1.03
Alabama.....	2370,000	11,057,906	2.36	1.55
Mississippi.....	950,000	1,868,544	1.11	1.15
Louisiana.....	531,834	1,551,232	.71	1.06
Texas.....	2650,000	5,682,123	2.74	1.73
Arkansas.....	2520,000	1,550,697	21.02	1.14
Oklahoma.....	.....	1,179,409	.....	2.38
Indian Territory.....	.....	481,516	.....	1.06
North Central Division:				
Ohio.....	6,831,035	15,691,039	2.52	3.65
Indiana.....	22,897,537	19,216,082	21.70	13.53
Illinois.....	6,656,542	20,266,618	2.57	3.96
Michigan.....	2,840,740	8,777,252	2.33	3.50
Wisconsin.....	1,932,539	7,000,159	1.70	3.25
Minnesota.....	960,558	6,774,336	2.06	3.65
Iowa.....	3,269,190	9,834,319	2.70	4.21
Missouri.....	1,749,049	8,363,128	.99	2.59
North Dakota.....	223,000	2,140,565	21.29	5.99
South Dakota.....	223,000	1,847,813	21.29	14.16
Nebraska.....	365,520	4,390,751	2.61	4.00
Kansas.....	904,323	14,804,563	2.24	3.27
Western Division:				
Montana.....	235,600	1,236,253	21.62	4.46
Wyoming.....	27,000	253,551	2.71	22.50
Colorado.....	67,395	3,100,855	1.44	15.40
New Mexico.....	24,900	300,531	2.05	1.46
Arizona.....	0	397,972	.....	2.98
Utah.....	2117,000	1,496,056	21.28	5.06
Nevada.....	285,000	1,209,484	21.93	15.13
Idaho.....	19,003	826,598	1.17	4.50
Washington.....	235,000	3,580,742	21.30	6.16
Oregon.....	2160,000	1,528,366	21.65	3.49
California.....	1,713,431	8,170,165	2.93	5.22

1 In 1901-02.

2 Approximately

3 In 1899-1900.

4 In 1900-01.

5 Returns imperfect.

TABLE XV.

The school expenditure of 1902-3 classified.

State or Territory	Paid for sites buildings, fur- niture, libra- ries and ap- paratus	Paid for teachers and superintend- ents' salaries	Paid for all others pur- poses prin- cipally main- tenance	Total expend- iture, exclud- ing payments of bonds
1	2	3	4	5
United States	\$46,289,074	\$157,110,108	\$48,058,443	\$251,457,625
North Atlantic Division	22,616,944	56,355,620	19,390,412	98,362,976
South Atlantic Division	1,664,912	10,926,372	2,095,433	14,686,717
South Central Division	1,687,501	14,759,630	1,746,603	18,193,734
North Central Division	16,369,682	62,014,806	20,731,137	99,115,625
Western Division	3,950,035	13,053,680	4,094,858	21,098,573
North Atlantic Division:				
Maine	399,051	1,290,079	262,953	1,952,083
New Hampshire (1901-02) ..	143,644	740,289	123,531	1,167,464
Vermont	191,547	704,703	196,988	1,093,238
Massachusetts	2,813,531	9,197,905	3,158,634	15,170,070
Rhode Island	416,280	1,109,775	330,321	1,856,376
Connecticut	563,823	2,214,362	748,430	3,526,615
New York	11,264,956	23,971,167	6,181,972	41,418,095
New Jersey	1,625,242	4,574,849	1,624,056	7,824,147
Pennsylvania	5,198,870	12,552,491	6,603,527	24,354,888
South Atlantic Division:				
Delaware (1899-1900)	79,306	279,556	94,808	453,670
Maryland (1900-01)	127,546	2,044,144	377,807	2,549,497
District of Columbia	329,355	954,888	256,036	1,540,279
Virginia	206,313	1,676,777	254,275	2,137,365
West Virginia	377,007	1,472,056	554,492	2,403,555
North Carolina	140,496	1,015,459	367,086	1,523,041
South Carolina	70,458	917,987	57,699	1,046,144
Georgia	234,969	1,963,397	41,881	2,240,247
Florida (1901-02)	99,462	602,108	91,349	792,919
South Central Division:				
Kentucky ²	295,655	2,219,178	148,030	2,662,863
Tennessee	214,000	1,772,177	173,267	2,159,444
Alabama (1901-02)	"	948,984	108,922	1,057,906
Mississippi	54,007	1,573,416	241,121	1,868,544
Louisiana	99,625	1,255,352	196,255	1,551,232
Texas	634,266	4,742,561	305,296	5,682,123
Arkansas	137,022	1,327,104	86,571	1,550,697
Oklahoma	4252,926	704,126	4222,357	1,179,409
Indian Territory ³	"	216,732	264,784	481,516
North Central Division:				
Ohio	1,679,322	10,047,059	3,964,658	15,691,039
Indiana (1901-02)	986,652	5,739,150	2,490,280	9,216,082
Illinois	4,351,247	12,309,585	3,605,786	20,266,618
Michigan	1,480,642	5,308,873	1,988,237	8,777,252
Wisconsin	1,333,512	4,340,804	1,334,843	7,009,159
Minnesota	1,748,160	4,379,137	647,039	6,774,336
Iowa	1,225,905	6,242,926	2,365,488	9,834,319
Missouri	1,713,369	5,275,590	1,376,169	8,365,128
North Dakota	352,399	1,011,560	776,606	2,140,565
South Dakota (1901-02)	218,937	1,129,439	499,437	1,847,813
Nebraska	758,075	2,922,178	710,498	4,390,751
Kansas (1901-02)	521,462	3,311,005	972,096	4,804,563
Western Division:				
Montana	367,131	651,738	217,384	1,236,253
Wyoming (1899-1900)	27,597	180,386	45,568	253,551
Colorado (1901-02)	400,626	1,883,163	817,066	3,100,855
New Mexico	42,192	214,251	44,088	300,531
Arizona	64,248	234,682	99,042	397,972
Utah	344,795	736,955	414,306	1,496,051
Nevada (1901-02)	13,665	168,531	27,288	209,484
Idaho	"	454,131	872,467	826,598
Washington	1,419,814	1,815,233	345,695	3,580,742
Oregon	227,071	1,049,180	250,115	1,526,366
California	1,042,896	5,665,430	1,461,839	8,170,165

¹ Includes debt paid.² Approximately.³ Included, so far as reported, in expenditure "for all other purposes."⁴ In 1901-02.⁵ Returns imperfect.⁶ Not reported separately.⁷ Included in volume 4.⁸ Includes expenditures for sites, buildings, etc.

TABLE XVI.

(1) Expenditure per pupil (based on average attendance); (2) average daily expenditure per pupil; (3) percentage analysis of school expenditure.

State or Territory	Expenditure per capita of average attendance				Average daily expenditure per pupil		Per cent. of total expenditure devoted to—		
	For sites, buildings, etc.	For Salaries	For all other purposes	Total per pupil	For Salaries only	Total	Sites, buildings, etc.	Salaries	All other purposes
1	2	3	4	5	Cts. 6	Cts. 7	8	9	10
United States	\$4.19	\$14.21	\$4.35	\$22.75	9.7	15.5	18.4	62.5	19.1
North Atlantic Division.....	8.09	20.16	6.94	35.19	11.3	19.7	23.0	57.3	19.7
South Atlantic Division.....	1.15	7.57	1.45	10.17	6.4	8.6	11.3	74.4	14.3
South Central Division.....	.83	7.24	.85	8.92	6.9	8.4	9.3	81.1	9.6
North Central Division.....	3.96	15.00	5.02	23.98	9.6	15.3	16.5	62.6	20.9
Western Division.....	6.15	20.32	6.38	32.85	13.9	22.5	18.7	61.9	19.4
North Atlantic Division:									
Maine.....	4.10	13.24	2.70	20.04	9.3	14.0	20.4	66.1	13.5
New Hampshire (1901-02).....	2.92	15.02	5.75	23.69	10.7	16.9	12.3	63.4	24.3
Vermont.....	3.93	14.47	4.05	22.45	9.3	14.5	17.5	64.5	18.0
Massachusetts.....	7.24	23.67	8.13	39.04	12.7	21.0	18.6	60.6	20.8
Rhode Island.....	8.20	21.86	6.51	36.57	11.3	19.0	22.4	59.8	17.8
Connecticut.....	4.73	18.57	6.28	29.58	9.8	15.7	16.0	62.8	21.2
New York.....	12.14	25.82	6.66	44.62	13.7	23.7	27.2	57.9	14.9
New Jersey.....	7.09	19.96	7.08	34.13	10.4	17.9	20.8	58.4	20.8
Pennsylvania.....	5.88	14.20	7.47	27.55	8.5	16.6	21.4	51.5	27.1
South Atlantic Division:									
Delaware (1899-1900).....	23.13	21.05	23.75	21.93	26.5	210.5	17.5	61.6	20.9
Maryland 1900-01.....	.94	15.08	2.79	18.81	7.9	9.9	5.0	80.2	14.8
District of Columbia.....	8.66	25.10	6.73	40.49	14.4	23.3	21.4	62.0	16.6
Virginia.....	.92	7.46	1.13	9.51	6.1	7.8	9.6	78.5	11.9
West Virginia.....	2.42	9.47	3.57	15.46	7.7	12.6	15.7	61.2	23.1
North Carolina.....	3.52	33.78	1.36	35.66	24.3	36.5	9.2	66.7	24.1
South Carolina.....	.34	4.38	.28	5.00	4.8	5.4	6.7	87.8	5.5
Georgia.....	.76	6.33	.13	7.22	5.4	6.1	10.5	87.6	1.9
Florida (1901-02).....	1.31	7.90	1.20	10.41	7.6	10.0	12.6	75.9	11.5
South Central Division:									
Kentucky ².....	.95	7.16	.48	8.59	8.0	9.5	11.1	83.3	5.6
Tennessee.....	.62	5.17	.51	6.30	5.4	6.6	9.9	82.1	8.0
Alabama (1901-02).....	.4	3.96	.45	4.41	3.9	4.3	.4	89.7	10.3
Mississippi.....	.23	6.75	1.03	8.01	5.5	6.5	2.9	84.2	12.9
Louisiana.....	.64	8.06	1.26	9.96	6.2	7.7	6.4	80.9	12.7
Texas.....	1.43	10.66	.69	12.78	9.2	11.0	11.1	83.5	5.4
Arkansas.....	.64	6.22	.41	7.27	6.8	7.9	8.8	85.6	5.6
Oklahoma.....	29.98	8.29	32.62	13.89	9.3	15.6	21.4	59.7	18.9
Indian Territory ³	"	14.61	17.86	32.47	29.2	220.5	6	45.0	55.0
North Central Division:									
Ohio.....	2.73	16.36	6.45	25.54	9.9	15.5	10.7	64.0	25.3
Indiana (1901-02).....	2.37	13.76	5.97	22.10	29.4	215.1	10.7	62.3	27.0
Illinois.....	5.76	16.30	4.78	26.84	10.2	16.8	21.5	60.7	17.8
Michigan.....	3.69	13.23	4.96	21.88	8.0	13.3	16.9	60.5	22.6
Wisconsin.....	4.73	15.39	4.73	24.85	8.5	13.8	19.0	61.9	19.1
Minnesota.....	6.70	16.79	2.48	25.97	10.6	16.4	25.8	64.6	9.6
Iowa.....	3.42	17.42	6.60	27.44	10.9	17.1	12.5	63.5	24.0
Missouri.....	3.68	11.34	2.96	17.98	7.8	12.3	20.5	63.1	16.4
North Dakota.....	6.22	17.86	13.71	37.79	11.9	25.2	16.5	47.2	36.3
South Dakota (1901-02).....	3.01	15.50	6.86	25.37	11.7	19.2	11.9	66.1	27.0
Nebraska.....	4.29	16.54	4.02	24.85	9.9	14.9	17.3	66.5	16.2
Kansas (1901-02).....	1.91	12.12	3.56	17.59	9.6	14.0	10.9	68.9	20.2
Western Division:									
Montana.....	11.66	20.71	6.91	39.28	219.4	236.7	29.7	52.7	17.6
Wyoming 1899-1900).....	22.86	218.69	24.72	226.27	217.0	223.8	10.9	71.1	18.0
Colorado (1901-02).....	4.55	21.40	9.29	35.24	14.0	23.0	12.9	60.7	26.4
New Mexico.....	1.62	8.22	1.69	11.53	9.3	13.1	14.0	17.3	14.7
Arizona.....	5.30	19.35	8.17	32.82	15.1	25.6	16.2	58.9	24.9
Utah.....	6.05	12.92	7.26	26.23	9.2	18.7	23.0	49.3	27.7
Nevada (1901-02).....	25.58	231.80	25.15	239.53	220.4	225.4	6.5	80.5	13.0
Idaho.....	7	13.21	10.83	24.04	210.6	219.4	7	54.9	45.1
Washington.....	14.04	17.96	3.42	35.42	15.5	30.5	39.6	50.7	9.7
Oregon.....	3.54	16.34	3.89	23.77	10.6	15.5	14.9	68.7	16.4
California.....	4.90	26.61	6.87	38.38	15.1	21.8	12.8	69.3	17.9

¹ Includes debt paid.

² Approximately.

³ In 1901-02.

⁴ Included so far as reported in expenditure for "all other purposes."

⁵ Returns imperfect.

⁶ Not reported separately.

⁷ Included in column 4.

⁸ Includes expenditure for sites, buildings, etc.

TABLE XVII.

Amount expended for common schools each year since 1869-70.

Year	Expended for—			Total Expend- iture
	Sites, build- ings, fur- niture, etc.	Teachers' and super- intendents' salary	All other purposes	
1869-70.....		\$37,832,566		\$63,396,666
1870-71.....		42,580,853		69,107,612
1871-72.....		45,935,681		74,234,476
1872-73.....		47,932,050		74,238,464
1873-74.....		50,785,656		80,054,286
1874-75.....		54,722,250		83,504,007
1875-76.....		55,358,166		83,082,578
1876-77.....		54,973,776		79,439,826
1877-78.....		56,155,133		79,083,260
1878-79.....		54,639,731		76,192,375
1879-80.....		55,942,972		78,094,687
1880-81.....		58,012,463		83,642,964
1881-82.....		60,594,933		88,990,466
1882-83.....		64,798,859		96,750,003
1883-84.....		68,584,275		103,212,837
1884-85.....		72,878,993		110,328,375
1885-86.....		76,270,454		113,322,545
1886-87.....		78,639,964		115,783,890
1887-88.....		83,022,562		124,244,911
1888-89.....	\$23,395,624	87,568,306		132,539,783
1889-90.....	26,207,041	91,836,484	\$22,463,190	140,506,715
1890-91.....	26,448,047	96,303,069	24,743,693	147,494,809
1891-92.....	29,344,559	100,298,256	26,174,197	155,817,012
1892-93.....	30,294,130	104,560,339	29,316,588	164,171,057
1893-94.....	30,007,688	109,202,405	33,292,750	172,502,843
1894-95.....	29,436,940	113,872,388	32,499,951	175,809,279
1895-96.....	32,590,112	117,139,841	33,769,012	183,498,965
1896-97.....	32,376,476	119,310,503	35,995,290	187,682,269
1897-98.....	31,415,233	124,192,270	38,685,408	194,292,911
1898-99.....	31,229,308	129,345,873	39,579,416	200,154,597
1899-1900.....	35,450,820	137,687,746	41,826,052	214,964,618
1900-01.....	39,872,278	143,378,507	44,272,042	227,522,827
1901-02.....	39,962,863	151,443,681	46,855,755	238,262,299
1902-03a.....	46,289,074	157,110,108	48,058,443	251,457,625

a Subject to correction.

TABLE XVIII.

(1) School expenditure per capita of population; (2) same per capita of average attendance.

Year	Expended per capita of Population						Expended per Pupil					
	The United States	North Atlantic Division	South Atlantic Division	South Central Division	North Central Division	Western Division	The United States	North Atlantic Division	South Atlantic Division	South Central Division	North Central Division	Western Division
1870-71.....	\$1.75	\$2.38	\$0.63	\$0.73	\$2.14	\$2.15	\$15.20	\$18.31	\$10.27	\$9.06	14.87	21.87
1870-71.....	1.75	2.38	0.63	0.73	2.14	2.15	15.20	18.31	10.27	9.06	14.87	21.87
1871-72.....	1.83	2.40	.68	.81	2.31	2.27	15.93	18.86	10.46	9.08	16.36	23.57
1872-73.....	1.84	2.44	.68	.74	2.31	2.42	16.06	19.89	9.25	8.39	16.53	25.04
1873-74.....	1.88	2.51	.76	.68	2.38	2.40	15.85	19.89	9.01	7.55	16.57	24.36
1874-75.....	1.91	2.55	.80	.73	2.36	2.76	15.91	20.17	8.98	7.51	16.69	26.85
1875-76.....	1.85	2.45	.79	.55	2.37	2.78	15.70	19.14	8.65	6.70	16.91	26.35
1876-77.....	1.72	2.29	.72	.51	2.21	2.61	14.64	17.89	7.68	6.25	15.93	24.69
1877-78.....	1.67	2.15	.70	.56	2.14	2.73	13.67	16.55	7.21	5.98	15.08	25.82
1878-79.....	1.56	2.03	.63	.55	2.00	2.53	12.97	16.05	6.76	5.65	14.22	23.39
1879-80.....	1.56	1.97	.68	.55	2.03	2.41	12.71	15.64	6.60	5.40	14.39	22.59
1880-81.....	1.63	2.08	.72	.58	2.09	2.54	13.61	17.14	7.22	5.72	15.19	23.81
1881-82.....	1.70	2.11	.78	.64	2.19	2.59	14.05	17.35	7.63	6.25	15.79	24.32
1882-83.....	1.80	2.22	.82	.68	2.34	2.74	14.55	18.17	7.46	6.17	16.69	25.39
1883-84.....	1.88	2.25	.84	.74	2.48	2.83	14.63	18.37	7.44	6.26	16.90	24.69
1884-85.....	1.96	2.38	.88	.82	2.53	2.90	15.12	19.19	7.32	6.74	17.53	26.31
1885-86.....	1.97	2.36	.88	.87	2.54	2.88	15.06	19.11	7.33	6.93	17.45	25.52
1886-87.....	1.97	2.35	.90	.87	2.55	2.76	15.07	19.38	7.33	6.88	17.45	24.85
1887-88.....	2.07	2.48	.95	.87	2.68	2.96	15.71	20.60	7.61	6.60	18.29	27.38
1888-89.....	2.17	2.59	.98	.94	2.76	3.28	16.55	21.64	7.77	7.12	19.30	29.37
1889-90.....	2.42	2.76	.99	.97	2.81	3.37	17.23	23.58	7.78	7.28	19.70	30.57
1890-91.....	2.31	2.78	1.06	1.04	2.85	3.91	17.54	23.66	8.52	7.78	19.42	33.42
1891-92.....	2.40	2.90	1.06	1.07	2.94	4.20	18.20	24.89	8.74	7.82	20.13	33.55
1892-93.....	2.48	3.02	1.09	1.06	3.06	4.20	18.58	25.01	8.65	7.72	20.62	33.57
1893-94.....	2.55	3.13	1.12	1.09	3.23	3.77	18.62	26.21	8.61	7.58	21.29	29.06
1894-95.....	2.55	3.28	1.11	1.09	3.13	3.67	18.41	26.84	8.58	7.69	20.26	27.32
1895-96.....	2.62	3.49	1.13	1.10	3.12	3.73	18.76	28.45	8.87	7.69	20.26	27.32
1896-97.....	2.63	3.65	1.17	1.04	3.06	3.56	18.67	28.77	8.97	7.09	19.47	28.29
1897-98.....	2.67	3.75	1.19	1.03	3.07	3.81	18.76	29.34	8.97	7.17	20.62	28.50
1898-99.....	2.70	3.71	1.24	1.04	3.15	3.84	19.38	29.28	9.96	7.17	20.62	28.50
1899-1900.....	2.84	3.99	1.24	1.08	3.27	4.21	20.21	31.82	9.61	7.32	21.12	30.98
1900-01.....	2.94	4.20	1.28	1.10	3.38	4.25	21.23	33.70	9.53	7.78	22.46	30.93
1901-02.....	3.03	4.22	1.33	1.16	3.52	4.62	21.53	33.39	9.91	8.16	22.83	32.26
1902-03a.....	3.15	4.44	1.34	1.22	3.61	4.80	22.75	35.19	10.17	8.92	23.98	32.85

a Subject to Correction.

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